

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

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Investigation of Whitewater Develop... HE

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS**

FIRST SESSION

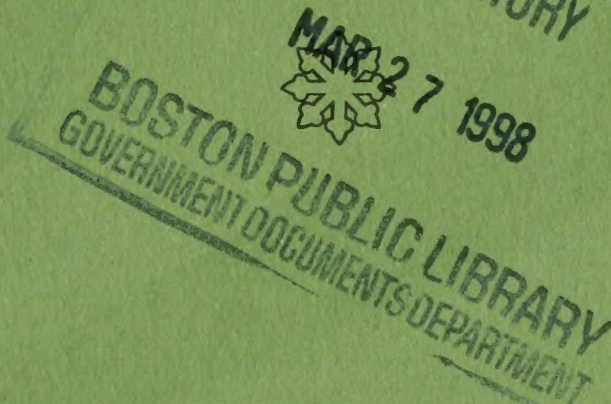
VOLUME V

ON

**THE INQUIRY INTO WHETHER IMPROPER CONDUCT
OCCURRED REGARDING THE WAY IN WHICH
WHITE HOUSE OFFICIALS HANDLED DOCUMENTS
IN THE OFFICE OF WHITE HOUSE DEPUTY COUNSEL
VINCENT W. FOSTER, JR., FOLLOWING HIS DEATH**

JULY 10, 11, 12, 13, 14, 17, 21, 24, 31, 1995;
AND FEBRUARY 13, 1996

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

DEPOSITIONS

BEFORE THE

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WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

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WASHINGTON : 1997

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WEDNESDAY, JUNE 21, 1966

THURSDAY, JUNE 22, 1966

FRIDAY, JUNE 23, 1966

MONDAY, JUNE 26, 1966

CONTENTS

VOLUME III

MONDAY, JUNE 19, 1995

| | Page |
|-----------------------|------|
| S. Res. 120 | 1 |
| Cheryl A. Braun | 27 |
| James Chinery | 101 |

TUESDAY, JUNE 20, 1995

| | |
|-----------------------|-----|
| Robert M. Popik | 143 |
| John C. Rolla | 161 |

WEDNESDAY, JUNE 21, 1995

| | |
|-------------------------|-----|
| Donald A. Flynn | 267 |
| Robert H. Hines | 337 |
| Michelle D. Macon | 441 |
| Jimmy K. Young | 471 |

THURSDAY, JUNE 22, 1995

| | |
|-------------------------|-----|
| Paul B. Imbordino | 487 |
| Dennis S. Martin | 549 |
| John S. Skyles | 635 |

FRIDAY, JUNE 23, 1995

| | |
|-----------------------------|-----|
| Bruce Edward Abbott | 653 |
| Thomas C. Collier, Jr. | 725 |
| John W. Magaw | 777 |
| Henry P. O'Neill | 805 |

MONDAY, JUNE 26, 1995

| | |
|----------------------------|------|
| Deborah L. Gorham | 907 |
| Marlene A. MacDonald | 1013 |
| Betsy Pond | 1043 |

TUESDAY, JUNE 27, 1995

| | |
|---------------------------|------|
| Thomas E. Castleton | 1135 |
| Robert E. Langston | 1259 |
| Sylvia M. Mathews | 1317 |
| Ronald K. Noble | 1383 |

VOLUME IV**WEDNESDAY, JUNE 28, 1995**

| | |
|----------------------------------|------|
| Dennis M. Condon | 1427 |
| John K. Danna | 1479 |
| Peter W. Markland—Volume I | 1531 |

THURSDAY, JUNE 29, 1995

| | |
|-----------------------|------|
| Roger C. Adams | 1713 |
| Charles W. Hume | 1837 |
| Roy M. Neel | 1977 |

FRIDAY, JUNE 30, 1995

| | |
|-----------------------------------|------|
| Carolyn C. Huber | 2003 |
| Peter W. Markland—Volume II | 2033 |
| Scott Salter | 2079 |

WEDNESDAY, JULY 5, 1995

| | |
|--------------------------------|------|
| Bill Burton | 2183 |
| Joseph H. Phillips | 2291 |
| George R. Stephanopoulos | 2303 |

THURSDAY, JULY 6, 1995

| | |
|------------------------------------|------|
| Mark D. Gearan | 2345 |
| Evelyn S. Lieberman | 2467 |
| Thomas F. "Mack" McLarty III | 2541 |
| Cynthia M. Monaco | 2601 |
| Dee Dee Myers | 2689 |

FRIDAY, JULY 7, 1995

| | |
|-----------------------------|------|
| Nancy E. McFadden | 2789 |
| Clifford M. Sloan | 2827 |
| Margaret Ann Williams | 2979 |

VOLUME V

MONDAY, JULY 10, 1995

| | |
|---------------------------|------|
| Lisa Caputo | 3083 |
| Craig Livingstone | 3129 |
| Stephen R. Neuwirth | 3207 |

TUESDAY, JULY 11, 1995

| | |
|-------------------------------|------|
| William H. Kennedy | 3345 |
| Michael L. Spafford | 3409 |
| Patsy L. Thomasson | 3489 |
| Linda R. Tripp—Volume I | 3543 |
| W. David Watkins | 3575 |

WEDNESDAY, JULY 12, 1995

| | |
|------------------------------------|------|
| David R. Gergen | 3613 |
| Bruce R. Lindsey | 3703 |
| Cheryl Mills | 3763 |
| Bernard W. Nussbaum—Volume I | 3829 |
| Howard G. Paster | 3999 |
| James Shea, Jr. | 4025 |
| Linda R. Tripp—Volume II | 4045 |

THURSDAY, JULY 13, 1995

| | |
|-------------------------------------|------|
| Webster L. Hubbell—Volume I | 4095 |
| Bernard W. Nussbaum—Volume II | 4165 |

FRIDAY, JULY 14, 1995

| | |
|------------------------------------|------|
| Terry Lynnette Cobey | 4253 |
| Webster L. Hubbell—Volume II | 4295 |
| Louis Gale Hupp | 4319 |
| Jack Quinn | 4353 |
| Diann Walters | 4375 |

MONDAY, JULY 17, 1995

| | |
|-------------------------|------|
| Susan P. Thomases | 4423 |
|-------------------------|------|

FRIDAY, JULY 21, 1995

Philip B. Heymann 4497

MONDAY, JULY 24, 1995

William B. Anderson, Jr. 4615

MONDAY, JULY 31, 1995

Deborah L. Gorham 4713

Linda R. Tripp 4753

TUESDAY, FEBRUARY 13, 1996

Charles Scalera 4789

**DEPOSITION OF LISA CAPUTO
IN RE: S. RES. 120**

MONDAY, JULY 10, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of LISA CAPUTO, called for examination pursuant to notice of deposition, at 3:40 p.m. in Room 640-A of the Hart Senate Office Building, before JANE W. BEACH, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
ALICE S. FISHER, Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
LANCE COLE, Esq.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

WILLIAM W. TAYLOR III, Esq.
LESLIE M. BERGER, Esq.
Zuckerman, Spaeder, Goldstein, Taylor & Kolker
1201 Connecticut Avenue, NW
Washington, DC 20036
On behalf of the Deponent.

CONTENTS

WITNESS

EXAMINATION

Lisa Caputo

by Mr. Johnson 3

Errata 3127

1 PROCEEDINGS

2 (3:40 p.m.)

3 Whereupon,

4 LISA CAPUTO

5 was called for deposition in the above-entitled
6 matter and, having been first duly sworn by the
7 Notary Public, was examined and testified as
8 follows:

9 EXAMINATION

10 BY MR. JOHNSON:

11 Q Good afternoon, Ms. Caputo.

12 Thank you, first of all, for being so
13 patient with us.

14 We've met briefly off the record, but for
15 the benefit of the record let me introduce myself
16 again and say more officially who I am.

17 My name is Everett Johnson. I am one of
18 the attorneys representing the Republican Members of
19 the Special Senate Committee investigating Whitewater
20 and Related Matters.

21 What brings us here today is Senate
22 Resolution No. 120 which creates that Committee and

4

1 authorizes an investigation into generally matters
2 related to the Whitewater Development Corporation.

3 Specifically today the topic of inquiry is
4 the investigation into Mr. Foster's death on or about
5 July 20th, 1993, and, more particularly, into the
6 handling of Mr. Foster's documents at or around the
7 time of his death.

8 So the questions that I will ask you
9 today, or that Mr. Ben-Veniste will ask you today,
10 will relate generally to that topic.

11 Let me ask you, just preliminarily,
12 whether or not you've ever been deposed before. And
13 I don't mean in connection with this matter, but just
14 generally.

15 A Yes.

16 Q You'll know these procedures well, but let
17 me just take a moment and remind maybe both of us of
18 a couple of things that will help us be more
19 efficient.

20 Ms. Beach is our certified shorthand
21 reporter. She'll make a verbatim transcription of
22 the questions that we ask and the questions that you

1 give. For her to do that, it is important for us to
2 recall not to speak simultaneously.

3 It is also important that you answer
4 questions verbally rather than with gestures or nods
5 because she can't record those.

6 I'll try and make the questions as clear
7 as I can make them.

8 I will sometimes fail, and I'll rely on
9 you to tell me if a question is confusing or you
10 don't understand it. Just say so, and we'll bring it
11 around to something that is perhaps more
12 understandable.

13 If you need to confer with your counsel at
14 any time, say so. You're welcome to do that. And if
15 you want to take a break for any reason, just let us
16 know that and we will do that, as well.

17 In preparing to give your deposition here
18 this afternoon, did you meet with anyone to discuss
19 your testimony?

20 A I met with my counsel.

21 Q Who was physically present during that
22 meeting?

1 A Bill Taylor and Leslie Berger.

2 Q No one else, I take it?

3 A No.

4 Q And other than that meeting, did you meet
5 with anyone else?

6 A No.

7 Q Did you discuss your testimony here today
8 with anyone at the White House?

9 A No.

10 Q Could you take just 30 seconds and
11 describe your professional background?

12 A Do you mean the history of my professional
13 background?

14 Q Yes, sort of just post-college. Bring us
15 to date since college.

16 A I attended graduate school, and then
17 served as press secretary to Representative Bob
18 Traxler in the House of Representatives.

19 After that, I worked on the 1988
20 Presidential Campaign for Michael Dukakis.

21 And after that, I served as press
22 secretary to Senator Tim Wirth in the U.S. Senate;

1 and then left that office to join the 1992
2 Presidential Campaign for Bill Clinton. And then in
3 1993, was appointed to my current position.

4 Q What was your role in the 1988 Dukakis
5 campaign?

6 A I served as National Issues Press
7 Secretary.

8 Q Let me just get a couple of details on
9 this.

10 Where did you attend graduate school?

11 A Northwestern University.

12 Q Did you receive a graduate degree?

13 A Masters of Science and Journalism.

14 Q And I think you said you joined the
15 Clinton Presidential Campaign in 1992?

16 Is that correct?

17 A Yes.

18 Q What was your role in that Campaign?

19 A Press Secretary to Mrs. Clinton.

20 Q Had you, prior to becoming Press Secretary
21 to Mrs. Clinton, and excluding for a moment any
22 interviews for that job, had you ever met President

1 or Mrs. Clinton prior to that time?

2 A No.

3 Q Just in a general way tell us how you got
4 the job as press secretary to Mrs. Clinton for the
5 campaign.

6 A I met Mrs. Clinton at the 1992 Democratic
7 National Convention where I served as Director of the
8 Vice President's press operation at the Convention.

9 Mrs. Clinton had not had a press secretary
10 and needed a press secretary for the general election
11 campaign, and that's how I got the job.

12 Q During the course of the campaign, to whom
13 did you report?

14 A I guess I would say everybody ultimately
15 reported to Micky Cantor who was the campaign
16 chairman.

17 I reported more or less to Mrs. Clinton.

18 Q And during the -- after the Democratic
19 Convention and before the General Election in
20 November of '92, did you travel with Mrs. Clinton?

21 A I did.

22 Q Always?

1 Sometimes?

2 Never?

3 A Yes; always.

4 Q After the election in November of '92, did
5 you have any role in the transition?

6 A I did.

7 I was the press secretary for Mrs. Clinton
8 during the Presidential Transition.

9 Q And then I take it after the inauguration
10 you got your current job as press secretary for Mrs.
11 Clinton?

12 Is that correct?

13 A Yes.

14 Q To whom do you report in your current job?

15 A I report to the Chief of Staff for the
16 First Lady, Maggie Williams, and to the First Lady.

17 Q And do you also travel with Mrs. Clinton
18 in your present job?

19 A Yes.

20 Q Always?

21 A More or less, yes.

22 Q During the -- after the Democratic

10

1 Convention when you became press secretary to Mrs.
2 Clinton, and before the inauguration, did you have
3 any role in any matters relating to the Whitewater
4 Development Corporation?

5 A No.

6 Q Had you ever heard of it before?

7 A I had heard of Whitewater during the 1992
8 Presidential Campaign.

9 Q But you personally didn't have any
10 responsibilities vis-a-vis the press or anything in
11 the Campaign for Whitewater?

12 A No, I did not.

13 Q Well, let me just ask you a couple of
14 questions about how you and Mrs. Clinton work
15 together.

16 A lot of the questions that I intend to
17 ask will deal with roughly the July of 1993 time
18 frame.

19 So if something I ask you is different
20 today than it was then, I'd like it if you'd point
21 out that difference.

22 Otherwise, I'll just ask you about your

1 job generally.

2 A Okay.

3 Q What role, if any, do you have in Mrs.
4 Clinton's scheduling?

5 A I play a role in her scheduling.

6 Q What does that mean?

7 A I'm asked for my opinion as to what events
8 I think that she should do.

9 I also determine what interviews with the
10 press she does.

11 Matters relating to the media fall within
12 my purview pertaining to her schedule.

13 Q She has a scheduler, doesn't she?

14 A Yes.

15 Q Does that person travel with Mrs. Clinton?

16 A No.

17 Q So when Mrs. Clinton is traveling away
18 from the White House or away from Washington, is
19 there someone in the travel group who has primary
20 scheduling responsibility?

21 A Not really.

22 Q As a practical matter is there someone who

12

1 takes the lead on scheduling issues while on the
2 road?

3 A Do you mean in terms of logistics for the
4 next day? Or do you mean...

5 I'm not clear.

6 Q Well, suppose there were going to be a
7 change in the First Lady's schedule.

8 She wanted to change it or something
9 necessitated a change in the schedule while she was
10 away from Washington.

11 How would that normally be coordinated?

12 A Probably through the trip director.

13 Q Is that someone who travels with the First
14 Lady?

15 A Yes.

16 Q When you travel as a matter of practice
17 with the First Lady, do you personally have a copy of
18 her schedule?

19 A Yes.

20 Q Ms. Caputo, where is your office
21 physically located in the White House complex?

22 A It's located on the first floor of the Old

1 Executive Office Building.

2 Q The First Lady I know has an office on the
3 second floor of the West Wing.

4 Is that correct?

5 A Yes.

6 Q Does she also have an office in the Old
7 Executive Office Building?

8 A No.

9 Q Do you personally conduct press briefings
10 from time to time?

11 A Do you mean with the press?

12 A Yes.

13 Q As in a briefing?

14 A What I think of as a press conference, or
15 a briefing.

16 A No -- on occasion.

17 On a foreign trip recently I did a morning
18 briefing for the traveling press with us.

19 Q I'm just trying to get a sense of it.

20 The White House Press Secretary has what
21 they refer to as daily briefings.

22 A No, I do not have a daily briefing.

1 Q Do you give interviews for attribution on
2 behalf of the First Lady?

3 A Yes, I do.

4 Q As part of your job, do you review White
5 House transcripts of all press briefings, whether for
6 the First Lady or the President or the press
7 secretary?

8 A I try and look at them if I have time.

9 There's no way I look at every single
10 briefing.

11 Q Do you have someone who from time to time
12 points out particular questions and answers that are
13 relevant to the First Lady's interests that you look
14 at?

15 A There's no one designated to do that.

16 My staff knows to just usually keep their
17 ears open for any questions that may pertain to the
18 First Lady, as I do.

19 Q What responsibility, if any, do you have
20 for formal press releases from the First Lady's
21 office?

22 A We don't really issue any kind of formal

1 press release.

2 We do put out a public schedule in the
3 form of an advisory, but I am responsible ultimately
4 for putting out any kind of press release or media
5 advisory on her schedule -- I and my staff.

6 Q Do you have any responsibility to deal
7 with the press on behalf of any other members of the
8 First Lady's staff?

9 A That would depend on the press inquiry.

10 Q For example if the press wanted to
11 interview Maggie Williams, would they come through
12 you?

13 A Yes.

14 Q I would like to, if I could, focus
15 specifically on July 20th, 1993, the day Mr. Foster
16 died.

17 And unless -- as I remind myself sometimes
18 to remember to say that -- unless I indicate otherwise,
19 you can assume for the next series of questions we're
20 really talking about that time period, moving away
21 now from the sort of generic questions.

22 Where were you actually physically located

16

1 on the 20th of July?

2 A During the morning and into the afternoon
3 I was in California.

4 Then on a plane to Little Rock, Arkansas.

5 Q You were traveling with Mrs. Clinton, I
6 take it?

7 A Yes, I was.

8 Q How large a contingent does she travel
9 with?

10 A Do you mean with staff, or do you mean
11 with the whole -- with the Secret Service --

12 Q Well, yes -- the next question I want to ask
13 is who else was on that trip, and if you're going to
14 tell me it was hundreds of people, I will try and
15 find a better question.

16 Focus it on senior staff.

17 A For that particular trip?

18 Q For that particular trip.

19 A On that trip was Mrs. Rodham who is Mrs.
20 Clinton's mother; Chelsea Clinton; I believe two of
21 Chelsea's friends; myself; two other First Lady
22 staffers; a White House photographer; and Secret

1 Service.

2 Q Who were the other staffers for the First
3 Lady who were traveling?

4 A Kelli Craighead and Capricia Marshall.

5 Q And I think you said you were in
6 California in the morning and early afternoon of the
7 20th?

8 Is that right?

9 A Yes.

10 Q In Los Angeles?

11 A Yes, I believe it was Los Angeles.

12 Q And then you said you were on an airplane
13 to Little Rock.

14 A Yes.

15 Q Is that correct?

16 A Yes.

17 Q Do you know what time, California time,
18 you left for Little Rock?

19 A It was -- I can't be positive, but I think
20 it was some time around 2:30 Pacific Time that we
21 left Los Angeles.

22 Q So that would have been roughly 5:30

1 Eastern Time?

2 A Yes.

3 Q How long is the flight, if you recall,
4 from California to Little Rock?

5 A I don't really remember how long it was.

6 Q You didn't stop anywhere?

7 A No, it was a direct flight.

8 Q Were you sitting near the First Lady
9 during that flight?

10 A I -- I don't remember.

11 I wasn't sitting next to her.

12 There wasn't any -- I can't really remember
13 what the plane looked like inside, but she would have
14 been somewhere in the vicinity, I would imagine.

15 I can't remember.

16 Q You were in the same cabin, anyway?

17 A Well, there wasn't a -- there weren't
18 separate cabins.

19 It was just kind of one area.

20 Q When on the 20th, Ms. Caputo, did you
21 first learn that Mr. Foster's body had been found?

22 A I cannot remember exactly.

1 I could not pinpoint it.

2 Q Was it before or after you landed in
3 Little Rock?

4 A Oh, it was after.

5 Q Do you have any knowledge today of when
6 the First Lady first learned that Mr. Foster's body
7 had been found?

8 A Yes.

9 Q When was that?

10 A That would have been that evening in
11 Arkansas.

12 Q To the best of your knowledge, Mrs.
13 Clinton did not learn of Mr. Foster's death until you
14 landed in Arkansas?

15 Is that correct?

16 A To the best of my knowledge, yes.

17 Q Why do you think that?

18 A Because we were going along about our
19 business as usual.

20 Q And you were with her when she learned?

21 A Yes.

22 Is that correct?

1 A (Nods in the affirmative.)

2 Q Can you tell us what you recall about
3 that: how Mrs. Clinton learned of Mr. Foster's
4 death?

5 A Yes.

6 We landed in Little Rock and were met by a
7 motorcade somewhere in the early evening, around 7:30
8 or so, and we proceeded to Mrs. Rodham's house.

9 And we weren't there for very long -- it was
10 somewhere between 8:00 and 9:00 o'clock in the
11 evening; this is Central Time now I guess, right,
12 Central time -- that I was notified by a Secret Service
13 Agent that Mack McLarty wished to speak with me.

14 Q Let me just interrupt you there.

15 How were you notified? Were you beeped,
16 or paged?

17 A No.

18 An agent came in and said Mr. McLarty is
19 trying to reach you.

20 Q I'm sorry, I interrupted you.

21 A That's okay.

22 Q Go ahead.

1 A At that point I got on the phone with Mr.
2 McLarty, and he indicated that he -- he said something
3 along the lines, and I can't remember specifically,
4 but: is the First Lady there where I can talk to
5 her?

6 And I said, Yes.

7 And he said, Is there a place where I can
8 speak to her in private?

9 And I said, Yes.

10 And he said, I need to speak with her.

11 At which point I told the First Lady that
12 Mr. McLarty was on the phone to speak with her, and
13 she took the call.

14 Q Let me just stop you there for a second.

15 This was at Mrs. Rodham's home in Little
16 Rock?

17 Is that correct?

18 A Yes.

19 Q And the telephone you were speaking on was
20 a land line and not a cell phone?

21 A It was a land line; yes.

22 Q An ordinary telephone?

1 Somebody just dialed Mrs. Rodham's house,
2 as far as you can tell?

3 A Do you mean how I got on the phone with
4 Mr. McLarty?

5 Q No, no, I just mean was it some sort of
6 special high security phone? Or was it just a
7 regular old telephone?

8 A I believe it was just a regular telephone
9 in the kitchen.

10 Q Can you place the time of that call any
11 more specifically than you have?

12 A No.

13 It was somewhere between 8:00 and 9:00
14 o'clock that night.

15 Q The President was appearing on "Larry
16 King, Live," I believe that evening, which would have
17 been between 9:00 and 10:00 Eastern Time, which I
18 suspect is between 8:00 and 9:00 Central time.

19 A Um-hmmm.

20 Q Does that place in time the call for you
21 any more specifically?

22 A No.

1 Q Was anybody watching the President on
2 "Larry King, Live"?

3 A No.

4 MR. BEN-VENISTE: That was a tough
5 question. That may be your toughest question.

6 (Laughter.)

7 MR. JOHNSON: I will avoid all the obvious
8 follow-ups.

9 (Laughter.)

10 BY MR. JOHNSON: (Resuming)

11 Q You remember that Mr. McLarty called.
12 He didn't tell you that Mr. Foster was
13 dead, I take it?

14 A No, he did not.

15 Q What's the next thing that you remember?

16 I think when I interrupted you you said
17 the First Lady took the call?

18 A Yes, the First Lady took the call.

19 Q Were you physically present when she took
20 the call?

21 A I was in a -- she took the phone call in the
22 kitchen, and I then moved into sort of a living room

1 area of the condominium.

2 Q Could you overhear from where you were any
3 of the conversation between Mr. McLarty and Mrs.
4 Clinton?

5 A Yes, but not intentionally.

6 Q What do you recall hearing?

7 A The First Lady became very upset, and she
8 was crying.

9 Q I don't want to dwell, at least
10 unnecessarily, on the emotional component of this,
11 but I do need to ask whether you heard the substance
12 of any discussion.

13 For example, did you hear Mrs. Clinton
14 discuss with Mr. McLarty anything at all -- I don't
15 mean to limit it to this -- but anything at all about a
16 suicide note?

17 A No.

18 I remember hearing her say something along
19 the lines of 'I can't believe it's true,' or 'it just
20 can't be true.'

21 Q Do you remember, other than the emotional
22 content of the phone call, do you remember anything

1 else about the words that were said?

2 A I don't.

3 Q All right.

4 What's the next thing that you recall
5 happening in connection with Mr. Foster's death on
6 that evening?

7 A I left Mrs. Rodham's house and went to the
8 hotel where I was staying.

9 Q I might have skipped something here, but
10 how long was Mrs. Clinton on the phone with Mr.
11 McLarty?

12 A I don't know.

13 It's a blur to me.

14 I just don't know.

15 Q Was she still on the phone when you left?

16 A No.

17 Q So I take it at some point she came out of
18 the kitchen at the conclusion of the telephone call.

19 Did she report to you, or anyone else
20 present, what she had learned?

21 A No.

22 Q Was she still visibly upset?

1 A Yes, she was.

2 At which point I remember saying something
3 along the lines of 'I think maybe it'll be a good
4 idea if we all left and went to the hotel.'

5 Q By "we all," who did you mean?

6 A Myself and the other two staffers.

7 Q Okay.

8 A And I can't remember for sure what she
9 said.

10 It must have been something along the
11 lines of 'that's probably a good idea.'

12 Q At this point in time you still didn't
13 know why she was upset?

14 A No.

15 Q Okay. And I take it you did leave?

16 A Yes.

17 Q With the other two staffers?

18 A Yes.

19 Q What's the next thing that you know, Ms.
20 Caputo, that happened on that evening, the 20th of
21 July, 1993?

22 A Pertaining to what I did, or --

1 Q Well, yes.

2 That was a bad question.

3 Generally what happened next, is what I am
4 talking about.

5 A We, the other two staffers and I, got into
6 a van -- we knew something was clearly wrong.

7 We didn't know what it was.

8 Someone had overheard the word "suicide"
9 during the telephone conversation, and we all were
10 wondering who could it have been.

11 Q By "someone," you mean either one of the
12 two other staffers who were with you?

13 A Yes.

14 I cannot remember.

15 I just can't.

16 Q So you were all --

17 A We were all curious --

18 Q -- worried and speculating about who it
19 could be?

20 A That's correct.

21 Q You were pretty sure it wasn't the
22 President, right? At least that possibility had been

28

1 eliminated for you?

2 A Well --

3 MR. BEN-VENISTE: I don't know how much
4 this really advances anything.

5 BY MR. JOHNSON: (Resuming)

6 Q You never thought it was the President?

7 A No, I did not.

8 Q The reason I asked that is, it strikes me
9 as a little peculiar that no one would have said to
10 the First Lady: My God, what's wrong?

11 Is that unusual to you?

12 A Well, no it's not unusual to me.

13 If she felt that we should be informed,
14 she would inform us.

15 I am sure she had her reasons for not
16 saying anything.

17 Q I interrupted you again.

18 You said you were traveling back to the
19 hotel --

20 A Yes.

21 Q -- and people had heard the word "suicide,"
22 but didn't know at this point who it was.

1 A That's correct.
2 Q What's the next thing that happened?
3 A I really -- I don't remember.
4 I just, I remember at some point that the
5 President called, and -- I did not speak to the
6 President.
7 He spoke to one of the other staffers. We
8 were in adjoining rooms in the hotel.
9 And it was relayed to me that he said
10 something along the lines of, you know, Vince has
11 committed suicide and I need you girls to take care
12 of Hillary.
13 Q Can you place in time when that may have
14 occurred?
15 A I can't.
16 I'm sorry, I can't.
17 Q Had you gone to bed? Or were you still
18 awake?
19 A I was awake.
20 Q And, while the President didn't call you,
21 did someone come to your room and tell you that?
22 A We were in adjoining rooms.

1 I can't remember the exact chain of
2 events.
3 I was standing there when the phone rang,
4 or -- I just don't remember.
5 Q And that's the first time that you had
6 heard that it had been Mr. Foster's body that had
7 been found?
8 A I -- I think so, but I can't be absolutely
9 positive.
10 I just can't recall exactly when it was.
11 Q Do you recall anything else about that
12 evening?
13 A No.
14 Q Did you see the First Lady again on the
15 evening of the 20th?
16 A No, I did not.
17 Q When did you next see Mrs. Clinton?
18 A The next morning; Wednesday morning.
19 Q Approximately what time?
20 A Perhaps around ten o'clock, in that
21 general vicinity. 10:00 or 11:00.
22 Q Focusing now on the evening of the 20th

1 before you saw Mrs. Clinton the next morning, did you
2 have any conversations with Maggie Williams?

3 A No, not that I remember.

4 Q Did you have any conversations with anyone
5 at all, other than the two staffers who you've
6 described as accompanying you back to the hotel?

7 A I just don't remember.

8 Not that I remember.

9 Q Do you remember what was on the First
10 Lady's schedule for Wednesday, the 21st of July?

11 A Yes.

12 Q What was her schedule?

13 A She had a series of personal appointments
14 in Little Rock.

15 Q I'm not exactly sure what you mean by
16 "personal." You mean, non-public appearances?

17 A Yes.

18 They were doctors' appointments.

19 Q Did anyone contact you on the evening of
20 the 20th, or the early morning hours of the 21st,
21 with regard to her schedule?

22 A Not that I remember.

1 I don't believe so.

2 Q Okay. I think you said you saw Mrs.
3 Clinton next again in the vicinity of ten o'clock on
4 the morning of the 21st?

5 Is that right?

6 A That's a general ball park.

7 I think it was around that time.

8 Q Where did you see her?

9 A At Mrs. Rodham's house.

10 Q Did you return there?

11 A Yes, that -- Yes.

12 Q Had Mrs. Clinton called you and asked you
13 to come there, or you just kind of in the ordinary
14 course went back?

15 A I don't remember exactly the chain of
16 events.

17 I remember going to a grocery store to
18 pick up groceries and taking them over to the house.
19 When we arrived at the house, there were a number of
20 members of the media at a stake-out at the bottom of
21 the hill where the house is situated -- the condominium
22 is situated on top of a hill, and I went down to

1 speak to the press, and then walked up the hill and
2 actually met her, I think, at the car.

3 Q When you said you went down to speak to
4 the press, do you mean to make a statement? Or just
5 to inquire why they were there and what they wanted?

6 A Yes.

7 It was to inquire why they were there and
8 what they were looking for.

9 Q And what were they looking for?

10 A They wanted, you know, to know, as best I
11 remember, sort of details about any kind of funeral
12 arrangements and what have you.

13 I don't remember specifically.

14 I just don't.

15 Q Now when you saw Mrs. Clinton on the
16 morning of the 21st, did you have any conversations
17 with her regarding Mr. Foster's death?

18 A The only thing I remember is getting into
19 the car with her and telling her how sorry I was.

20 And she said something along the lines of
21 'depression is something no one can ever understand';
22 something along those lines.

1 And that was basically the extent.

2 Q Did you, on that day or really any time
3 since that day, have you had any conversations with
4 Mrs. Clinton about what, if anything, she did on the
5 evening of July 20th after she learned about
6 Mr. Foster's death?

7 A No.

8 Q So as you sit here today, you don't know
9 who, if anyone, she may have spoken to on the
10 telephone that evening?

11 A Well, there are news accounts today that
12 say that she had --

13 MR. TAYLOR: That's -- no. He's not asking
14 that.

15 MR. JOHNSON: I actually am.

16 MR. TAYLOR: Are you? You mean to include
17 what she may have learned from that?

18 MR. JOHNSON: I meant in the second
19 question. The first question was about specific
20 conversations with Mrs. Clinton -- thanks, Bill -- and
21 the second question was intended to be on the basis
22 of anything at all.

1 As you sit here today, I'm asking, do you
2 know anything at all about Mrs. Clinton's activities
3 on the evening of the 20th?

4 MR. TAYLOR: Well my objection goes beyond
5 the one that I think I made; because when you're
6 asking her what she knows, you are suggesting a level
7 of fact that I don't think she's prepared to help you
8 on.

9 If you would like to rephrase it to
10 include anything she may have heard or read said by
11 others, whether she knows it to be true or not, then
12 I think the record would more fairly reflect what she
13 can do.

14 BY MR. JOHNSON: (Resuming)

15 Q Let's take Mr. Taylor's suggestion.

16 From any source at all, including things
17 that you may know personally or things that you may
18 have heard from any other source, what understanding
19 do you have today about Mrs. Clinton's activities on
20 the evening of the 20th?

21 And once you do that we'll be clear about
22 the basis.

1 MR. TAYLOR: And I will instruct her that
2 her answer may not include anything that has come up
3 in the course of confidential communications with
4 counsel --

5 MR. JOHNSON: Of course.

6 MR. TAYLOR: -- or questions we may have
7 asked her.

8 MR. JOHNSON: Sure.

9 BY MR. JOHNSON: (Resuming)

10 Q Excluding things you may have learned from
11 your lawyers.

12 MR. TAYLOR: Now that gymnastic is going
13 to require that you respond to his question on the
14 basis of everything you may have heard or read,
15 except those things which you've been asked and told
16 about in confidential sessions with Ms. Berger and
17 me.

18 BY MR. JOHNSON: (Resuming)

19 Q Does any of this make any sense anymore?

20 A I have to say I'm now confused.

21 Q Okay. Let's try again.

22 For purposes of all of my questions, this

1 one and any other questions that I ask, you can feel
2 free to exclude from your answer anything that you
3 know simply because your lawyers may have told you
4 that, or asked you about it.

5 Now the question, however, is intended to
6 say: As you sit here today, excluding what we've
7 just talked about, things you may have learned from
8 your lawyer, what information, if any, do you have
9 about Mrs. Clinton's activities on the evening of the
10 20th after she learned of Mr. Foster's death?

11 THE WITNESS: Can I consult?

12 MR. JOHNSON: Sure.

13 (Witness and counsel consult.)

14 THE WITNESS: I know, based on what I read
15 in today's news accounts, in some of them it
16 indicated that there was a contact between Mrs.
17 Clinton and Maggie Williams.

18 BY MR. JOHNSON: (Resuming)

19 Q Did you learn that for the first time
20 today?

21 A (Pause.)

22 Yes, I did.

1 Q Other than what's reported in today's
2 press accounts about supposed contacts between Mrs.
3 Clinton and Mrs. Williams on that evening, do you
4 know anything else at all about her activities on
5 that evening?

6 A No, I don't.

7 Q Now Mrs. Clinton has spoken at at least
8 one press conference about her activities on that
9 evening.

10 Is that right?

11 A I don't know that her activities were
12 subject of that press conference.

13 Q Are we remembering the same one? The
14 April 22nd press conference?

15 A Yes.

16 MR. JOHNSON: Counsel, just give me a
17 second, if you would. Maybe I can shorten this.

18 MR. TAYLOR: Sure.

19 BY MR. JOHNSON: (Resuming)

20 Q Let me show you a document -- and it's
21 actually not -- I'll come back to the press briefing in
22 a moment, but this may even be slightly more

1 helpful -- which is dated Z000076 and 77, which has
2 been produced to us by the White House.

3 It says at the top under the stamp
4 "REDACTED," it says:

5 "The First Lady's response to questions of
6 The Boston Globe's readers."

7 Let me just ask you to take a look at
8 that.

9 (Handing document to the witness.)

10 THE WITNESS: Okay.

11 BY MR. JOHNSON: (Resuming)

12 Q Did you prepare that document?

13 A I helped prepare this document in
14 consultation with the Clinton's personal attorney,
15 David Kendall.

16 Q On the --

17 MR. TAYLOR: Counsel, am I correct that
18 the staff has resolved issues of privilege with
19 persons who might claim them with regard to this
20 transaction, or this document?

21 MR. JOHNSON: With respect to this
22 document?

1 MR. TAYLOR: Yes.

2 MR. JOHNSON: I'm not aware that any -- this
3 document has been produced to us by the White House,
4 and I'm not aware of any privilege that's been
5 asserted --

6 MR. TAYLOR: Okay.

7 MR. JOHNSON: -- in connection with this.

8 BY MR. JOHNSON: (Resuming)

9 Q Referring now to the second page, which
10 bears document No. 000077, the question is:

11 "What were in the documents in Vince
12 Foster's office that you sent your people in to
13 retrieve after his suicide?"

14 Answer: "Again, I was in Arkansas at the
15 time of Vince Foster's death and I didn't send anyone
16 into his office to retrieve anything."

17 Who provided that information that's part
18 of this document?

19 A I can only assume that it was David
20 Kendall.

21 Q It was not you?

22 A No.

1 Q And as we sit here today, do you know what
2 Mr. Kendall's source of information was, if any, on
3 the statement "I" -- referring I take it to the First
4 Lady; am I reading that correctly?

5 A Yes.

6 Q "I didn't send anyone in to his office to
7 retrieve anything"?

8 You don't know what Mr. Kendall based that
9 on?

10 A That's a question for Mr. Kendall.

11 Q You just don't know?

12 A I could speculate, but I think that that's
13 better answered by Mr. Kendall.

14 Q Later on in that same answer it says, "And
15 there were personal files of mine and the President
16 that went to our outside lawyer."

17 Did you write that statement?

18 A As I said earlier, I can't remember which
19 words were mine and which ones were David
20 Kendall's.

21 We discussed the responses to the readers'
22 questions, you know, in conjunction with one another,

1 so I can't -- I mean, I can't remember if I am
2 responsible for that line or Mr. Kendall is.

3 Q It's just kind of blurred today?

4 A Very. Very blurred.

5 Q Whether or not you wrote this line or Mr.
6 Kendall did, did you ever discuss personally any of
7 these responses with the First Lady?

8 A I don't recall having a direct
9 conversation with her.

10 I do remember at some point sending the
11 document over for her to get a sign-off before I
12 FAX'd it to The Boston Globe.

13 Q And did you get a sign-off?

14 A Yes.

15 Q How do you know when you've gotten a sign-
16 off?

17 A Mrs. Clinton usually calls and says it's
18 fine.

19 Q And did she in fact call you and say
20 that's fine with respect to this document/

21 A I mean, she must have because I sent it
22 off to The Boston Globe.

1 Q You wouldn't have sent it off without her
2 acknowledgement that it was okay to do so?

3 A That's correct.

4 Q Now the copy that I have of this, which is
5 the only copy that I have of this, doesn't have a
6 date on it.

7 Are you able to place this in time?

8 A Yes.

9 This I believe ran in The Boston Globe May
10 19th of 1994, or in that general vicinity.

11 It was May of 1994.

12 Q So it was after Mrs. Clinton's press
13 briefing on April 22nd, 1994?

14 A Yes.

15 Q Were you physically present at the press
16 briefing that Mrs. Clinton gave?

17 A Yes.

18 Q And just to make sure we're talking about
19 the same one, I have a transcript of it here, but
20 certainly the only topic here was not the contents of
21 Mr. Foster's office; it was a wide-ranging press
22 briefing generally on the topic of Whitewater and

44

1 other matters of interest.

2 Is that right?

3 A Yes.

4 Q Were you involved in any preparation of
5 the First Lady for that press briefing?

6 A Yes, I was.

7 Q Can you tell us what preparation you were
8 involved in?

9 A We conducted some Q and A sessions with
10 the First Lady and prepared a question and answer
11 document as a briefing, as part of a briefing book
12 before she did her press conference.

13 Q In any of the preparation that you have
14 just described, were the topics of Mr. Foster's
15 office, or the documents in Mr. Foster's office
16 discussed with the First Lady?

17 A I can't remember specifically.

18 The general topic of Vince Foster was
19 discussed.

20 Q But you don't have any specific
21 recollections about discussing the documents in
22 Mr. Foster's office or anything like that?

1 A Not specifically, no.

2 Q Let me show you a document, which is the
3 transcript I believe of this press briefing, that's
4 been produced to us by the White House.

5 It is at Z000096 through, the same
6 preface, 114.

7 Let me ask you, first of all, whether
8 you've seen this before?

9 A This page?

10 Q The transcript itself.

11 A Yes.

12 Q And is that in fact the White House
13 transcript of that press briefing?

14 A It appears to be.

15 Q At the bottom of page 106 there's a
16 question and answer that maybe you can help me with.
17 It says:

18 Question: Can you clarify for us what
19 documents were removed from Vince Foster's office
20 after he died, and why they were there in the first
21 place?

22 Answer, by Mrs. Clinton: Mike, I can tell

1 you what I know, which is that I did not know that
2 Vince had any of the documents related to our
3 personal business in his office until after his
4 death.

5 Do you see that statement?

6 (Handing document to the witness.)

7 A Yes.

8 Q And had you ever discussed with Mrs.
9 Clinton prior to this press briefing her knowledge
10 about what documents she was aware to have been in
11 Mr. Foster's office prior to his death?

12 MR. TAYLOR: Let me ask you to clarify the
13 question because I don't think it's going to read
14 clearly.

15 Do you mean the question is to the First
16 Lady's knowledge prior to Foster's death?

17 MR. JOHNSON: Yes.

18 Not discussions prior to his death, but
19 her knowledge prior to his death.

20 THE WITNESS: So could you repeat -- what is
21 the question?

22 BY MR. JOHNSON: (Resuming)

1 Q Sure.

2 Mrs. Clinton said that prior to
3 Mr. Foster's death she wasn't aware that Mr. Foster
4 had any of their personal documents in his office.

5 And my question -- prior to Mr. Foster dying
6 she wasn't aware of that is how I read that.

7 A Um-hmmm.

8 Q My question to you is: Have you ever had
9 any conversations with her on that topic about her
10 knowledge about what Mr. Foster had in his office?

11 A If I did, it would have been in the
12 context of these prep sessions for the press
13 conference, if it came up, and I just cannot remember
14 specifically if it did.

15 Q So therefore you don't know, other than
16 what we've together just read here, what knowledge if
17 any she had about --

18 A That's correct.

19 Q -- what documents may have been in
20 Mr. Foster's office.

21 Am I right?

22 A That's correct.

1 Q Let me show you another question and
2 answer, which is in the same document.

3 It appears at page 107. The question is:
4 "And, to follow, why did your Chief of
5 Staff, Maggie Williams, why was she among those to
6 remove these documents from his office?"

7 Answer, by Mrs. Clinton: "I don't think
8 that she did remove any documents. I think that what
9 happened is that after Mr. Nussbaum reviewed the
10 documents, and after he did so as I recall -- I was not
11 here; i was in Arkansas -- but I believe that that was
12 done in the presence of officials from the Park
13 Police and maybe some other agencies" and the answer
14 continues after that.

15 Mrs. Clinton appears to mean this response
16 to be saying that Maggie Williams did not remove any
17 documents from Mr. Foster's office.

18 My question to you is: What information,
19 if any, do you have about whether or not that was an
20 accurate statement?

21 A At -- let me backstep for a second.

22 In August of 1994, I found out through

1 press accounts that the documents in Foster's office
2 were placed in the residence by Maggie Williams.

3 At the time of this press conference, I
4 didn't know that.

5 So I can only say, based on my knowledge,
6 that Mrs. Clinton's statement is accurate.

7 Q Well what is the basis of your knowledge?

8 A That -- I mean, I knew at the time that -- I
9 knew nothing at the time about any document removal
10 from Mr. Foster's office.

11 And it wasn't until I guess it was August
12 of 1994 when it came out in the press that I learned
13 that there had been documents placed in the residence
14 of the White House between the time of Mr. Foster's
15 death and the time that they went into the hands of
16 the Clinton's counsel.

17 MR. TAYLOR: I would like to consult for
18 one second.

19 MR. JOHNSON: Sure.

20 (Witness and counsel consult.)

21 (Pause.)

22 BY MR. JOHNSON: (Resuming)

1 Q Did you want to clarify something?

2 A Yes.

3 I remembered shortly after Vince's death --
4 Dee Dee Myers held a press briefing and I remember
5 hearing something in that briefing about documents
6 going to somebody.

7 I can't remember specifically what she
8 said.

9 And then that winter of '93, somewhere
10 around December, it came out in press accounts that
11 there was a Whitewater file among Mr. Foster's things
12 that was discovered when documents were turned
13 over -- Whitewater documents were turned over to the
14 Justice Department.

15 I did not know at that time, and not until
16 August of 1994, that the documents were taken by
17 Maggie Williams and placed in a secure place in the
18 residence.

19 Q I think I got that, but let me see.

20 I think you'll know when I state it wrong
21 and you'll be able to correct me.

22 You became aware in December based upon a

1 briefing, or sometime in the winter of 1993 based
2 upon Ms. Myers' statement that there was a Whitewater
3 file in Mr. Foster's office?

4 A No?

5 A No.

6 Q Okay, I did miss it.

7 Say it again.

8 A I don't believe it was in a -- it came out --
9 I -- I discovered it in news accounts, I think it was,
10 or during the time when the documents were turned
11 over to the Justice Department.

12 It was in a news account, or several news
13 accounts that there was a Whitewater file among
14 Mr. Foster's documents.

15 At that time is when I remember learning
16 that there were personal documents in Mr. Foster's
17 office.

18 Q I see.

19 (Witness and counsel confer.)

20 THE WITNESS: The Dee Dee Myers briefing
21 that I referred to earlier was sometime right after
22 Vince's death, late July, maybe, where she made a

1 reference in that briefing -- it was a White House
2 press briefing and she was asked by members of the
3 press sort of I think what happened to the documents,
4 and there was something she said about personal
5 documents going to someone, or something like that.

6 BY MR. JOHNSON: (Resuming)

7 Q Okay.

8 When did you first become aware that the
9 documents that had been in Mr. Foster's office had
10 been placed in the White House residence?

11 A August of '94.

12 Q Did you ever have any conversations
13 directly with the First Lady in connection with her
14 press statements, or otherwise, about her knowledge
15 regarding the handling of the documents in
16 Mr. Foster's office?

17 A Again, if any conversation took place it
18 would have been during those prep sessions for the
19 press conference.

20 Q And as we sit here today, you don't have a
21 more specific recollection of what exactly may have
22 been discussed than you've already testified about?

1 A No.

2 Q Did you ever have any conversations with
3 Maggie Williams about the handling of the documents
4 in the First Lady's office -- I mean, in Mr. Foster's
5 office?

6 A I may have sometime when it came out in
7 the press that she had put the documents in storage,
8 because I was asked.

9 There were a lot of press inquiries as to
10 the chain of events, and I was asked to help sort of
11 reconstruct the chain of events along with Dee Dee
12 Myers and a member from the White House Counsel's
13 office.

14 Q And do you think in doing that you spoke
15 personally with Ms. Williams about what happened?

16 A I may have.

17 I just don't remember.

18 MR. TAYLOR: Can we consult again,
19 counsel?

20 MR. JOHNSON: Sure.

21 (Witness and counsel confer.)

22 BY MR. JOHNSON: (Resuming)

1 Q Did Ms. Williams ever state to you that
2 she had not removed anything from Mr. Foster's
3 office?

4 A Yes.

5 Q When did she say that?

6 A In December of 1993 I received a press
7 inquiry from The Wall Street Journal, and was asked
8 by the reporter what was Maggie Williams doing in
9 Mr. Foster's office?

10 And I asked -- I then in turn asked Maggie
11 to respond to the reporter's inquiry, and I remember
12 her saying: I saw a light on in Vince's office; I
13 was in shock and went into his office briefly; and
14 left, and I took nothing.

15 Q Now that would seem to me to describe Ms.
16 Williams visits to Mr. Foster's office on the evening
17 of his death, July 20th, 1993.

18 A Yes.

19 Q Did Ms. Williams ever describe to you
20 what, if anything, she may have removed from
21 Mr. Foster's office after that evening of July 20th,
22 1993?

1 A Not that I can remember, no.

2 Q Did she ever tell you that she didn't
3 remove anything at any time from Mr. Foster's office?

4 A Ummm... I'm trying to think back to -- I
5 can't remember.

6 MR. BEN-VENISTE: See, I am a little
7 concerned that the record may not reflect accurately
8 on either what you are asking or what the witness is
9 answering because of the use of the term "remove" in
10 the way that it has been used here.

11 There have been two ways that the term
12 "removed" has been used: one in connection with
13 whether something was removed in an unauthorized
14 manner on the evening of July the 20th; but,
15 secondly, there is a question of whether, if someone
16 is presented with something to take, whether that is
17 a "removal," and whether the witness so understands.

18 So that the material that was given to Ms.
19 Williams on the 22nd by Mr. Nussbaum might
20 technically be said to be "removed," but wouldn't
21 have the same connotation as some unauthorized
22 removal on the 20th.

1 I am just concerned that there might be
2 some confusion there, Kip, as between the two.

3 MR. JOHNSON: Well, in the event that is
4 confusing, let me try and clear it up a little bit.

5 BY MR. JOHNSON: (Resuming)

6 Q For my question, don't take "removal" to
7 mean authorized or unauthorized.

8 Take it to mean "to remove," "to take out,
9 with or without authorization."

10 I take it you have discussed with Ms.
11 Williams whether or not she removed anything, with or
12 without authorization, from Mr. Foster's office on
13 the evening of the 20th, the night that he died.

14 Is that right?

15 A I didn't -- I didn't ask -- I asked her the
16 reporter's question, which is: What were you doing
17 in Vince's office the night of the 20th.

18 Q I see.

19 A And the response she gave is what I just
20 indicated.

21 Q Part of which was, "I didn't remove
22 anything."

1 A That's correct.

2 I never asked her that question.

3 Q She sort of volunteered that in response
4 to The Wall Street Journal?

5 A As best as I remember.

6 Q And then to take up Mr. Ben-Veniste's
7 point, there is a later question about documents that
8 may have been in Mr. Foster's office on the evening
9 of his death which were subsequently taken out or
10 removed, with or without authorization by Ms.
11 Williams.

12 Have you had any conversations with her
13 about that?

14 A Again, if I had had a conversation it
15 would have been in the context of trying to
16 reconstruct the chain of events in response to press
17 inquiries in August of 1994 when I learned in the
18 press that the documents were placed in a safe place,
19 in the closet in the residence, until the Clinton's
20 personal attorney returned from Mr. Foster's funeral
21 in Little Rock.

22 Q Did you discuss that placing of the

1 documents in a safe place in the closet in the
2 residence with Ms. Williams?

3 MR. TAYLOR: "Yes" or "no," if you can
4 answer "yes" or "no."

5 THE WITNESS: No.

6 BY MR. JOHNSON: (Resuming)

7 Q Did you discuss that with anyone else
8 employed at the White House?

9 I know the press has raised questions with
10 you, but --

11 MR. TAYLOR: Again, keep your answers at
12 this point, please, to "yes" or "no," whether you had
13 such conversations with anybody employed by the White
14 House.

15 That includes White House counsel.

16 THE WITNESS: Yes, I did.

17 BY MR. JOHNSON: (Resuming)

18 Q With whom did you have such discussions?

19 A Dee Dee Myers and Jane Sherburne of the
20 White House Counsel's office.

21 Q When?

22 A August of 1994.

1 Again, in response to press inquiries -- and
2 I believe David Kendall.

3 Q What do you recall being discussed?

4 MR. TAYLOR: It is my duty to instruct the
5 witness that we have been advised by the White House
6 that they consider those conversations to be
7 privileged and have asked that we respect their
8 invocation of privilege with regard to those
9 conversations, and I am going to instruct her not to
10 answer the question for that reason.

11 MR. JOHNSON: Okay. Let me -- Bill, I
12 realize that you are honoring a request that doesn't
13 necessarily implicate your judgment one way or the
14 other, so let me ask some questions about the
15 physical presence and let me state for the record
16 that I have difficulty seeing privilege in a
17 conversation attended by Dee Dee Myers, but but it is
18 not yours to respond to, I understand.

19 BY MR. JOHNSON: (Resuming)

20 Q I think you testified that this was in
21 August of 1994?

22 Is that correct?

1 A Yes.

2 Q Were you there for the purpose of getting
3 or receiving legal advice, you, personally?

4 A Was I where?

5 Q In this conversation.

6 A I was in that conversation to piece
7 together information to respond to press inquiries.

8 Q So your purpose at least was not to get or
9 receive legal advice, but rather to respond to press
10 inquiries?

11 A That's correct.

12 That was the purpose.

13 Q That was the purpose of the entire
14 conversation, to the best of your knowledge?

15 A Yes.

16 MR. JOHNSON: Why don't we just go off the
17 record here.

18 Is that okay with you?

19 MR. TAYLOR: Sure.

20 (Discussion off the record.)

21 MR. JOHNSON: Back on the record.

22 Mr. Taylor will correct me if I state this

1 wrong. We understand that at the request of the
2 White House counsel will advise you not to answer
3 substantive questions about the contents of these
4 conversations.

5 He has also been kind enough to inform me
6 that the privilege being asserted, to the best of
7 your knowledge, is both attorney-client privilege as
8 it may relate to both the White House counsel and to
9 the First Family's personal attorney, Mr. Kendall,
10 and Executive Privilege.

11 Have I said that correctly?

12 MR. TAYLOR: I believe so.

13 BY MR. JOHNSON: (Resuming)

14 Q This conversation, Ms. Caputo, that we
15 have been discussing, was there anyone present other
16 than Ms. Myers, Ms. Sherburne, Mr. Kendall, and
17 yourself?

18 A I don't believe Mr. Kendall was present
19 physically. I do recall speaking to him on the
20 phone.

21 Q Was it a phone call placed to him for the
22 purposes of asking him some question -- don't reveal

1 the content -- or did he join the entire conversation
2 as a participant, albeit on the telephone?

3 A I don't really remember.

4 Q How long, generally speaking, did this
5 conversation last?

6 A I don't remember. I just don't remember.

7 Q More or less than a half an hour?

8 A Probably around a half an hour, maybe not
9 even. I just don't have a -- I just don't know.

10 Q To the best of your knowledge, did either
11 you or Ms. Myers disseminate to the public anything
12 that you learned in this conversation?

13 A You mean to the public through the press?

14 Q Yes.

15 A I believe Ms. Myers did.

16 I may have.

17 Q Did you have any understanding in this
18 conversation with Ms. Myers, Ms. Sherburne, and Mr.
19 Kendall, that you were having a confidential
20 communication?

21 A I understood the communication to be one
22 in which we gathered information to respond to press

1 inquiries.

2 Q So you felt as if you could disclose to
3 the press what you learned in this conversation?

4 A Yes.

5 MR. JOHNSON: Why don't we take a five-
6 minute break at this point. Off the record.

7 (Discussion off the record.)

8 MR. JOHNSON: Let's go back on the record.

9 MR. TAYLOR: In fairness to the White
10 House, Ms. Caputo's personal view of the purposes of
11 the conversations and the disclosures that resulted
12 from them may not be the same as the views of others
13 who were involved in them, and I think in fairness
14 the White House understands that the objective was in
15 part to obtain the views of White House counsel and
16 counsel to the Clinton's on certain matters which
17 were being discussed, at least so I have been
18 informed, and they do view that the presence or
19 participation of lawyers was not merely to provide
20 information.

21 But I agree with you it is appropriate for
22 you now to take that up with them.

64

1 MR. JOHNSON: What I am hoping to do -- off
2 the record.

3 (Discussion off the record.)

4 MR. JOHNSON: Let's go back on the record.

5 BY MR. JOHNSON: (Resuming)

6 Q Ms. Caputo, than you for your patience
7 through that. Let me try and wrap this up very
8 quickly.

9 What we have been discussing is a
10 conversation involving Ms. Myers, Ms. Sherburne, Mr.
11 Kendall, and yourself that you have described in more
12 detail, one topic of which was whether or not the
13 documents had been removed from Mr. Foster's office
14 and sent to the residence.

15 Am I correct so far that that's the
16 question that led to the assertion of privilege?

17 MR. TAYLOR: Well, you've characterized it
18 as "a" conversation. I don't know that you've gone
19 into that level of detail. I frankly don't know
20 whether there was one or a series of discussions.

21 MR. JOHNSON: Well that is initially where
22 I was going with it. I just wanted to refresh her

1 recollection.

2 MR. TAYLOR: Feel free to make the record,
3 but I don't necessarily agree with your
4 characterization that it is quite that narrow.

5 But the question was to you, not me.

6 THE WITNESS: So what is the question?

7 BY MR. JOHNSON: (Resuming)

8 Q I just wanted to remind you that that was
9 the topic we were talking about, these conversations
10 regarding the removal without any inferences about
11 authority of documents from Mr. Foster's office.

12 You testified at least about a
13 conversation, or a series of conversations, with Ms.
14 Myers, Mr. Sherburne, Mr. Kendall, and yourself.

15 Counsel on behalf of the White House
16 asserted a privilege with respect to that
17 conversations or series of conversations, so I now
18 want to ask you whether there are any other
19 conversations on the topic of removal of documents
20 from Mr. Foster's office in which you have
21 participated.

22 A No. Not that I recall.

1 Q Did you ever discuss the contents of
2 Mr. Foster's office, or the removal of documents from
3 Mr. Foster's office, with Mr. Nussbaum?

4 A No.

5 Q And just to be very clear, other than what
6 may or may not have been discussed in the prep
7 session for the April 22nd press conference by the
8 First Lady, you have also not discussed it with Mrs.
9 Clinton?

10 A Discussed what?

11 Q Mr. Foster's office, or the contents of
12 Mr. Foster's office, or the removal of documents from
13 Mr. Foster's office.

14 A Not that I can recall, other than in
15 preparation for that press conference, if it came up.

16 Q And you don't today recall whether or not
17 it did?

18 A No, I don't.

19 Q Excluding anything you may have learned in
20 the conversation for which the White House --
21 conversation or series of conversations for which the
22 White House has asserted a privilege -- as you sit here

1 today are you aware, or do you have information from
2 any source at all, excluding that information and
3 conversations with your own attorney, about whether
4 any documents were removed from Mr. Foster's office
5 either on the 20th or at any time thereafter?

6 A All I know is what I have read in news
7 accounts.

8 Q I think -- don't be alarmed by this return
9 in the chronology -- but I think you told me your next
10 conversation with the First Lady after the evening of
11 Mr. Foster's death was at ten o'clock on the morning
12 of the 21st.

13 Is that correct?

14 A Yes, in that general vicinity. I can't be
15 absolutely certain. Whatever time I arrived at Mrs.
16 Rodham's house.

17 Q Did you spend the rest of that day in the
18 presence of the First Lady?

19 A Yes.

20 Q What were your events on that day?
21 What, if anything, do you recall that you
22 did?

1 A That would be Wednesday, the 21st?

2 Q Yes.

3 A I accompanied her to her series of
4 personal appointments.

5 Q She did not cancel her personal
6 appointments?

7 A No, she did not.

8 Q Do you know whether or not Mrs. Clinton
9 spoke to Mr. Nussbaum on that day?

10 A No, I don't.

11 Q Do you know whether or not Mrs. Clinton
12 spoke to Mrs. Williams on that day?

13 A No, I don't.

14 Q Did you participate in or overhear any
15 conversations by Mrs. Clinton relating to
16 Mr. Foster's death?

17 A On Wednesday, the 21st?

18 Q Yes.

19 A No.

20 Q Do you know whether or not Mrs. Clinton
21 called Susan Thomasses either on the evening of the
22 20th or Wednesday the 21st?

1 A I have no idea.

2 Q Do you know who Ms. Thomasses is?

3 A Yes.

4 Q Who is she?

5 A She is a friend of President and Mrs.

6 Clinton.

7 Q Let me ask you the same series of
8 questions with respect to -- Have we now covered the
9 21st? I take it you don't have any recollections of
10 events on the 21st relating to Mr. Foster's death as
11 you sit here today that we haven't discussed?

12 A That's correct.

13 Q What about the 22nd?

14 What, if anything, do you recall happening
15 on the 22nd related to Mr. Foster's death, if
16 anything?

17 A Is that Thursday?

18 Q That would be Thursday.

19 A Mrs. Clinton had a public event that day
20 at the Arkansas Children's Hospital, and the only
21 thing that I remember relating to Vince Foster's
22 death is that there began to be a series of reporters

1 arriving -- national reporters arriving in Little Rock
2 doing stories about Vince Foster. That's the only
3 thing I really remember.

4 Q Just to nail this down to be super
5 cautious about it, you're not aware of whether or not
6 Mrs. Clinton spoke to Mr. Nussbaum on that day?

7 A No, I'm not.

8 Q Ms. Williams?

9 A No.

10 Q Ms. Thomasses?

11 A No.

12 Q Did you personally discuss, either on the
13 21st or the 22nd, the topic of a potential suicide
14 note with Mrs. Clinton?

15 Did the topic come up?

16 A No -- no, it didn't. Not that I remember.

17 Q How do you describe your relationship with
18 the First Lady? Are you close friends? Purely
19 professional? Or some other description?

20 A I'm an employee.

21 Q But you don't regard you and she as being
22 confidants, or close in an other than professional

1 way?

2 A I mean I regard her to be my boss and I
3 the employee, and so --

4 Q So it didn't strike you as odd that you
5 were not having conversations with Mrs. Clinton about
6 Mr. Foster's death on the 21st and the 22nd?

7 A No.

8 Q Okay. And I take it the First Lady
9 remained in Arkansas for Mr. Foster's funeral on the
10 23rd?

11 Is that correct?

12 A Yes.

13 Q And after that, on the evening of the 23rd
14 did Mrs. Clinton return to Washington?

15 A Yes.

16 Q That would be a Friday evening?

17 A That's correct.

18 Q Did you have any further contact with Mrs.
19 Clinton on Saturday or Sunday of that weekend?

20 A Not that I remember.

21 Q I take it when you returned on the evening
22 of the 23rd you were not personally aware whether or

72

1 not any documents had been placed in the White House
2 that had been removed from -- again without inference
3 to authority -- that had been removed from Mr. Foster's
4 office?

5 A No, I was not.

6 Q And I think you testified earlier that you
7 became aware that documents had been placed in the
8 closet in the residence sometime in August of '94?

9 Is that correct?

10 A That's correct.

11 Q The 26th of July 1993 was a Monday, the
12 following Monday. That is also the day that the
13 torn-up piece of paper, the personal note that
14 Mr. Foster wrote at some time, was discovered.

15 Do you recall that?

16 A Do I recall the note being discovered?

17 Q Yes.

18 A I remember reading about it in the paper.

19 Q You don't think you learned about it on
20 the 26th?

21 A No.

22 Q When do you think you first learned that a

1 note was discovered?

2 A Oh, I can't -- I don't know. I don't know
3 when it was. I remember reading it in the paper, but
4 I have no time frame.

5 Q Have you ever discussed with Mrs. Clinton
6 anything at all relating to the hand-written note of
7 Mr. Foster that was discovered on July 26th, 1993?

8 A How do you mean, did I...

9 Q Did you ever remember having a
10 conversation with her about it?

11 A No.

12 Q Let me show you a document which has been
13 redacted but it bears document production number
14 Z000534, and it says "Responses to taken questions,
15 Tuesday, August 10th, 1993," and ask you whether you
16 have ever seen this before.

17 (Handing document to the witness.)

18 A I really don't recall seeing it, but I may
19 have.

20 Q Today you don't know one way or the other
21 about it?

22 A I can only speculate as to what it is.

1 Q It says -- let me just read the sentence
2 that says:

3 "The First Lady has been aware of the
4 writing by the late Vince Foster, Jr.,
5 since shortly after it was found."

6 And that appears to me to be a response taken at a
7 press -- the response to a question taken at a press
8 briefing.

9 Do you have any different understanding of
10 what this document is?

11 A No, I don't.

12 Q Did you ever discuss with the First Lady
13 when she became aware of the writing by Mr. Foster?

14 A No, I did not.

15 Q Let me show you another document that
16 bears document production number Z000535. It appears
17 to be a handwritten note.

18 Just take a moment and glance at that.

19 (Handing document to the witness.)

20 (Pause.)

21 BY MR. JOHNSON: (Resuming)

22 Q Have you seen that before?

1 A Yes.

2 Q Is that your handwriting?

3 A No.

4 Q Whose handwriting is that, if you know?

5 A I believe it is Maggie Williams'

6 handwriting.

7 Q Do you have any understanding about what
8 this document is?

9 A I believe that I had received a press
10 inquiry or two asking, you know, when Mrs. Clinton
11 was apprised of the contents of the note.

12 If I remember, I think I asked Maggie
13 Williams and she wrote that down on a piece of paper
14 for me so that I could respond to press inquiries.

15 Q What was the basis of Ms. Williams'
16 information, if you know?

17 A I don't know.

18 Q So you don't know whether or not she
19 discussed this with the First Lady?

20 A You'd have to ask her.

21 Q Okay.

22 (Handing document to the witness.)

1 Let me me just show you another document,
2 production number 000573. It appears on the
3 stationery of the law offices of Williams & Connally.
4 It appears to be dated August 16th, 1994, addressed
5 to The New York Times and signed by David Kendall.

6 (Pause.)

7 Have you seen that document before?

8 A Yes.

9 Q When have you seen that before?

10 A In August of 1994.

11 Q Did you play any role in the preparation
12 of that document?

13 A No, I didn't, other than to indicate to
14 David Kendall when the Bill Saffire Column appeared,
15 that a response was necessary, and he agreed.

16 Q Do you think you saw that in draft form
17 before it was transmitted?

18 A I may have.

19 Q Referring back now to the conversation
20 with Ms. Myers, Ms. Sherburne, and Mr. Kendall on the
21 telephone, and yourself, was this letter drafted
22 before or after that conversation, to the best of

1 your recollection?

2 A I believe it was after.

3 MR. JOHNSON: Bill, listen carefully to
4 this question. I don't know whether you need to
5 instruct on that or not.

6 BY MR. JOHNSON: (Resuming)

7 Q Was the conversation that you just
8 described with Mr. Kendall about whether or not a
9 response was required to Mr. Saffire's article part
10 of the conversation between Ms. Myers and Ms.
11 Sherburne that we had earlier discussed?

12 A No.

13 Q It's a different conversation all
14 together?

15 A Yes.

16 MR. TAYLOR: I always listen carefully to
17 your questions, counsel.

18 MR. JOHNSON: I know. That makes one of
19 you.

20 (Laughter.)

21 MR. JOHNSON: I don't.

22 BY MR. JOHNSON: (Resuming)

1 Q Let me show you another document, if I
2 could, that is dated August 11th, 1994, bearing
3 document production number 000575 and 576. Again,
4 this is on the letterhead of the White House and is
5 signed by Lloyd Cutler, Special Counsel to the
6 President.

7 I would ask you whether you've seen that
8 document before?

9 A Yes.

10 Q Did you play any role in the preparation
11 of that document?

12 A Not that I remember.

13 Q When do think you first saw that document?

14 A August of '94.

15 Q Before or after it was sent out?

16 A It may have -- I may have seen it before. I
17 can't remember exactly.

18 Q In the bottom paragraph of this document
19 it indicates that Ms. Williams consulted with
20 Mrs. Clinton before Ms. Williams stored the documents
21 securely in the residence. To the best of your
22 knowledge, is that what happened?

1 A I don't know.
2 Q Do you remember reading that statement in
3 this letter by Mr. Cutler?
4 A Not -- It doesn't stick in my mind.
5 Q And you never talked with the First Lady
6 about whether or not she consulted with Ms. Williams
7 or directed Ms. Williams to place the documents in
8 the residence?
9 A No, I didn't.
10 Q Let me show you another document which has
11 been produced to us bearing document production
12 number Z000143, 144, and 145, and ask you whether
13 you've ever seen that document before?
14 (Handing document to the witness.)
15 (Pause.)
16 THE WITNESS: Can I consult?
17 MR. JOHNSON: Sure.
18 (Witness consults with counsel.)
19 MR. TAYLOR: Do you have a question?
20 MR. JOHNSON: Had she ever seen it before
21 I think was the only question I had asked about this
22 document.

1 THE WITNESS: I don't think so, but I may
2 have.
3 BY MR. JOHNSON: (Resuming)
4 Q You don't have any specific recollection
5 of it today?
6 A No; huh-uh.
7 Q Can you tell by looking at this document
8 whether or not it's a document that you prepared?
9 A I did not prepare that document.
10 Q At the top right-hand corner in
11 parenthetical it bears the initials WNE, dated
12 1/6/94. Who is "WNE"?
13 A Neil Eggleston.
14 Q Was Mr. Eggleston employed at the White
15 House in January of 1994?
16 A Yes.
17 Q What was his job?
18 A He was a member of the White House
19 counsel's office.
20 Q (Pause.)
21 Give me just a second. I may in fact be
22 finished.

1 (Pause.)

2 Let me see, Ms. Caputo, before we complete
3 completely that I understand a couple of things
4 correctly. I will say just for benefit of counsel,
5 and also for your benefit, this is not a memory test.
6 I am not asking you to recall everything you have
7 testified to here in the deposition today, but as I
8 have heard it what you have told us is: Other than
9 things that you may or may not have said or heard in
10 connection with the April 22nd press briefing given
11 by Mrs. Clinton, you have not participated in any
12 conversations with the First Lady on the topic of
13 Mr. Foster's office, or the suicide note, or the
14 removal of any documents from Mr. Foster's office.

15 Is that correct?

16 A Yes, I believe so.

17 Q And other than the one conversation or
18 series of conversations for which the White House has
19 asserted both attorney-client and Executive
20 Privileges, you have not discussed the contents of
21 Mr. Foster's office or the removal of documents from
22 that office with anyone else at any other time,

1 excluding your counsel and the Independent Counsel,
2 if you have had conversations with him.

3 MR. TAYLOR: Well, do you mean to include
4 or exclude the conversation with Ms. Williams about
5 the night of the suicide?

6 MR. JOHNSON: I'm sorry. Excluding that,
7 which you've described.

8 THE WITNESS: As best I can recall, yes,
9 that's correct.

10 BY MR. JOHNSON: (Resuming)

11 Q And as you sit here today, largely the
12 basis of your knowledge about the events that
13 transpired in Mr. Foster's office on the evening of
14 the 20th and thereafter, other than as you have
15 testified here today, are based entirely upon press
16 reports and other things that you have have heard
17 just like any other citizen?

18 Is that correct?

19 A That's correct.

20 MR. JOHNSON: Thank you, very much, for
21 your patience. I appreciate it.

22 There is one open issue which apparently

1 we are not going to resolve today, which relates to
2 the Privilege, Mr. Taylor. We will just leave that
3 as an open issue.

4 But other than potential follow-up with
5 respect to that, I don't have any further questions.

6 Mr. Ben-Veniste will have some questions.
7 At the end of that, I would just like to say one
8 brief word about confidentiality. Thanks.

9 MR. BEN-VENISTE: You may say your brief
10 word, because I think you have been so thorough that
11 I have no questions to ask of Ms. Caputo.

12 MR. JOHNSON: I always feel bad when
13 Richard compliments me, but I will say thanks.

14 Thank you, very much, for your patience.
15 The confidentiality of this proceeding is extremely
16 important to all of us, as I am sure you know, and we
17 would be grateful if you did not discuss your
18 deposition here with anyone.

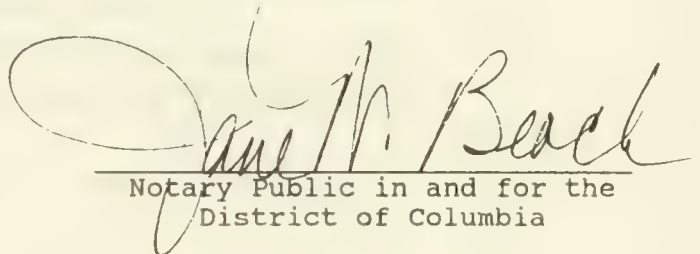
19 THE WITNESS: Understood.

20 MR. JOHNSON: Thank you.

21 (Whereupon, at 5:28 p.m., the deposition
22 was adjourned.)

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JANE W. BEACH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires NOVEMBER 14, 1996

DEPONENT Lisa M. Caputo

ERRATA

[illegible]

**DEPOSITION OF CRAIG LIVINGSTONE
IN RE: S. RES. 120**

MONDAY, JULY 10, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of CRAIG LIVINGSTONE, called for examination pursuant to notice of deposition, at 11:15 a.m. in Room 640-A of the Hart Senate Office Building, before LORI J. SEGNERI, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
LANCE COLE, Esq.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

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CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Craig Livingstone | |
| by Mr. Johnson | 3 |
| by Mr. Ben-Veniste | 119 |
| by Mr. Johnson | 138 |

EXHIBITS

| Craig Livingstone | IDENTIFIED |
|------------------------------|------------|
| DEPOSITION NUMBER | |
| Exhibit Z463 | 26, 3201 |
| Exhibits Z494 and Z496 | 29, 3202 |
| Exhibits Z497 and Z498 | 32, 3204 |
| Exhibit Z460 | 112, 3206 |

1 PROCEEDINGS

2 Whereupon,

3 CRAIG LIVINGSTONE

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q Good morning, Mr. Livingstone.

9 A Good morning.

10 Q We've met very briefly off the record. Let
11 me more formally introduce myself on the record. My
12 name is Everett Johnson, and I'm one of the attorneys
13 representing the Republican members of the Senate
14 Whitewater committee. What brings us here this
15 morning is Senate Resolution Number 120, which
16 creates the committee and authorizes an investigation
17 into certain matters generally related to what the
18 public has come to know as Whitewater.19 Specifically this morning we're looking at
20 the investigation into the death of Vince Foster and
21 more specifically into the handling of the documents
22 in Mr. Foster's office at or around the time of his

4

1 death. You may recall that Mr. Foster died on July
2 20, 1993, so a lot of what we'll talk about today
3 will focus generally on that time period.4 Let me ask you just as a preliminary matter
5 whether or not you've ever been deposed before, and I
6 don't mean necessarily in connection with this
7 matter, but just ever.

8 A I don't believe so.

9 Q I'll go over just a couple of procedural
10 things that will make it more efficient here today.
11 Lori Segneri is our court reporter, and she'll make a
12 verbatim transcription of the questions that I ask
13 you or Mr. Ben-Veniste may ask you and the answers
14 you may give. For her to do that, it is important
15 for us not to speak simultaneously. And so even
16 though you may know what my question is, if you allow
17 me to finish, it will make her job easier. And it's
18 important to speak verbally and not in gestures or
19 nonverbal communication.20 I'll try and make the questions as clear as
21 I can. When I fail, I'll rely on you a little bit
22 for you to tell me you don't understand the question,

1 and we'll work it around into something that it is
2 understandable. If you want to confer with your
3 counsel, feel free, and if you want a break, say so
4 and we'll take a break. Any questions so far?

5 A No. Thank you. I understand.

6 Q Great. In preparing to give your
7 deposition testimony here today, did you meet with
8 anyone?

9 MR. TURK: Other than counsel, you mean?

10 MR. JOHNSON: He can tell me if he met with
11 counsel and I will ascertain --

12 THE WITNESS: I met with counsel.

13 BY MR. JOHNSON:

14 Q Anyone other than the lawyers representing
15 you here today present during that meeting?

16 A No, sir.

17 Q And you haven't met with anyone other than
18 your counsel to discuss your testimony; is that
19 correct?

20 A That's correct.

21 Q Why don't you take 30 seconds or so and
22 tell us a little bit of your working biography.

1 A At the White House or in general?

2 Q Why don't you take us kind of from high
3 school or college or whatever the most relevant
4 starting point is?

5 A I was a military brat, and I finished high
6 school at the Beaver Area Senior High School in
7 Beaver, Pennsylvania.

8 Q Okay.

9 A In 1977.

10 Q All right.

11 A And my family was in Hawaii at the time,
12 and I went to school at the University of Hawaii,
13 so -- Leeward campus, which I believe is in Aiea,
14 Hawaii, or Pearl City, but it's the Leeward campus.
15 And after that I went for a year --

16 Q Did you get a college degree?

17 A No. It's a two-year campus. I just went
18 there for one year.

19 Q Okay. Great. I'm sorry. Go ahead.

20 A And after that I went for the next year --
21 the next academic year I went to Northern Virginia
22 Community College in Annandale.

1 Q Okay.

2 A For a year. Maybe a year and a quarter.
3 It was on a quarter system, so it's hard to say.
4 It's a year or a little bit more. And then
5 transferred to the Indiana University of Pennsylvania
6 in Indiana, Pennsylvania. While there I enrolled in
7 a -- at the University of the State of New York,
8 which is in Albany, which is a regents' external
9 degree program. What that means is they take your
10 credits from all your schools and your life
11 experience and, in my case, based on a suitable
12 score -- pass-fail on a GRE combined with my credits
13 from those schools -- they awarded me a degree, BS in
14 liberal studies. And that was in 1982.

15 Q Did you take up full-time employment after
16 that?

17 A I worked -- I worked at a couple bars in
18 Washington. I moved down to Washington after
19 receiving the degree and enrolled in the American
20 University, its graduate program. And I tried to
21 work full-time and go to school full-time, and after
22 a semester I dropped out. I just couldn't cut it.

1 Q Okay. What did you do then?

2 A I continued to work in some of the
3 restaurants and bars that I had worked in. I had a
4 lot of interim employment in that time. J. Paul's
5 restaurant in Georgetown, a bar called Annie's, also
6 in Georgetown. I was working on a nonpaid basis with
7 the U.S. Student Association. I was a national vice
8 president of the student lobby group, which is part
9 of the reason I came to Washington.

10 Q Okay.

11 A As I said, I had a fair amount of interim
12 employment; most of it was centered around J. Paul's
13 at that time.

14 Q It's not necessary -- I realize your time
15 is short today. It's not necessary to go through
16 every one of these. Why don't you just tell us when
17 you assumes sort of full-time employment other than
18 in the bars and restaurants that you were describing?

19 A Well, I really haven't had a lot of
20 full-time employment other than here at the Senate.

21 Q What was your position at the Senate?

22 A I was Tim Wirth's assistant. I believe it

1 was in the '87 election when he first came in. My
2 responsibilities were to bring his Congressional
3 offices over to the Senate. I was there for about a
4 year. Prior to that I had worked on both the Hart
5 campaign for a good period of time, and -- I'm trying
6 to think if I had anything significant long term.
7 After the -- after that I worked on, I think it was
8 Hands Across America -- just prior to that I worked
9 on Hands Across America. I worked on a lot of
10 special things, that type of thing which can run
11 four, five months. And campaigns, which were the
12 same kind of --

13 Q Did you go to work on the Clinton campaign?

14 A Yes. Prior to that I worked for the city
15 of Washington for about a year, and I worked in
16 Baltimore with an ad agency for about the same period
17 of time.

18 Q Tell me about your role in the Clinton
19 campaign.

20 A I was an early supporter. And while in
21 Washington, when the governor would come from time to
22 time from Arkansas, I would help out with Washington

10

1 events because I knew the city well. Everything from
2 like getting a couple of drivers for a car for he and
3 an aide. Nothing substantive, though, really.

4 Q Logistical work?

5 A Yes. Advance would be the best way to
6 describe it. I didn't come on the campaign until the
7 end of the campaign. Prior to that I worked for the
8 DNC shortly. During the general election came on the
9 campaign, I guess, at the end; I ran the State House
10 event, which was the election night event. I worked
11 with another person who was in charge of the event
12 and I was in charge of the site, so number two, I
13 guess you would call it. And after that, I guess it
14 was the next week or so, in the next couple of weeks
15 I was interviewed and offered a position of director
16 of security at the inaugural committee.

17 Q To whom did you report there?

18 A Ms. Sherry Carter. Her title was director
19 of operations.

20 Q Was this a paid position?

21 A Yes.

22 Q How long did you continue in that role?

1 This is back until the inauguration?

2 A Yes, I think a week or two after the
3 inauguration. I think they kept us all on. I don't
4 know if we actually worked or kept us on the payroll,
5 but it was around a week or so afterwards.

6 Q Okay. Where did you work next?

7 A I helped coordinate the President's first
8 visit to Camp David, and what that was for was so he
9 could meet with his new cabinet as members of the
10 cabinet to discuss the framework of the
11 administration. Again that was an advance,
12 logistical kind of support role.

13 Q When did you take up employment in the
14 White House?

15 A Shortly thereafter. I believe within a few
16 weeks.

17 Q Sometime in midwinter of 1993; is that
18 correct?

19 A No, sir. I think it was the first or
20 second week of February, to be more precise.

21 Q What was your title at the time?

22 A We went through a couple titles. Assistant

12

1 to the counsel of the President and director of White
2 House security.

3 Q Let me see if I got it. Assistant --

4 A To the counsel of the President.

5 Q Okay.

6 A And director of White House security. At
7 some point after my arrival there I -- the reason I
8 mention that is I wrote a memo to my boss, William
9 Kennedy, associate counsel, that I thought the title
10 was a little misleading because people confused it
11 with law enforcement or Secret Service work and we
12 changed the office name sometime that late winter or
13 early spring to White House personnel security, which
14 I am now the director of, White House personnel
15 security.

16 Q All right. When you first assumed
17 full-time employment at the White House, I'm a little
18 confused, did you have two titles or just one?

19 A Truthfully I'm not positive, but I believe
20 it was both titles.

21 Q Assistant to the counsel of the President
22 and director of White House security; is that right?

1 A Right. It's not uncommon for people to
2 have one long title.

3 Q Okay. And you reported to Mr. Kennedy?

4 A That's correct.

5 Q What was Mr. Kennedy's title? Do you
6 recall?

7 A I believe he was associate counsel to the
8 President for the entire time that I worked for him.

9 Q Okay. And then you testified that later in
10 time your title changed. Did your job also change,
11 or just the title?

12 A No, sir. To be specific, the title changed
13 but the job did not change.

14 Q And did you continue to report to
15 Mr. Kennedy?

16 A I've had four bosses, but --

17 Q Why don't we go through those real
18 quickly. Was Mr. Kennedy the first one?

19 A No. Interim person that ran, oversaw my
20 office was Cheryl Mills. I'm not positive, but I
21 believe she was the first person in counsel's office
22 that I talked to about the job.

1 Q Okay.

2 A Shortly thereafter Mr. Kennedy came on.

3 Q Okay.

4 A Then Ms. Beth Nolan. And now Chris Cerf,
5 C-e-r-f.

6 Q In July of 1993, the month that Mr. Foster
7 died, were you reporting to Mr. Kennedy at the time?

8 A Yes, sir.

9 Q I understand that the job title has
10 changed, but the job itself has remained pretty much
11 the same. Is that a fair statement?

12 A Actually some of my responsibilities have
13 been reduced.

14 Q Okay. Why don't we focus on your
15 responsibilities as the -- they existed in July of
16 1993 for the moment. And just tell me what they
17 were.

18 A Principally to adjudicate backgrounds on
19 individuals submitted by FBI, CIA, Department of
20 State, Department of Defense, et cetera as they would
21 pertain to individuals' employment at the White
22 House, suitability for employment.

1 Q So when people applied for employment at
2 the White House, you participated in the background
3 checks?

4 A Yes, sir.

5 Q And along with the FBI and other agencies?

6 A Correct.

7 Q In a generic way, how did that work? Did
8 they prepare reports and send them to you?

9 A An individual would be made known to us
10 from management and administration, that they were
11 going to be either detailed or employed by the White
12 House. We would issue them a packet of papers which
13 included, among other things, standard form 86, which
14 is the background form that the FBI uses to conduct
15 an investigation; a tax check waiver for the IRS so
16 the IRS can release records to us; instructions as to
17 how to complete the packet; and a waiver from counsel
18 to fill out the forms authorizing us to release it to
19 the FBI and anybody else that we deemed necessary to
20 review it. And then we would check the forms for
21 errors or completions, have them refill them out, if
22 necessary, then send them off to the appropriate

1 federal agency. And then the federal agencies would
2 send them back to us for review.

3 Q Okay. Did you play any role in the
4 background investigation of White House employees
5 that may have been conducted by the FBI or other
6 agencies?

7 A All White House staff are conducted by the
8 FBI.

9 Q And did you play any role in those
10 background investigations conducted by the FBI?

11 A To be specific, I would review the forms or
12 someone in my office would review the forms for the
13 completeness. We would send them off. I would
14 adjudicate them upon receiving them from counsel's
15 office for any suitability concerns.

16 Q The FBI prepares, for example, reports of
17 background investigations that it conducts. Did you
18 see those?

19 A Yes.

20 Q Okay. You were describing generally your
21 job duties, and I think what took us down this path
22 is your involvement in the investigations of White

1 House employees. Any other general job duties as
2 director of security?

3 A Initially, I would help on events from time
4 to time because I had that experience over about 10
5 years or so working on campaign style events until we
6 all got on the grounds at the White House. You know,
7 I would help out where I could, with visits to the
8 lawn or that kind of thing where we would have photo
9 opportunities.

10 I also conducted a security briefing for
11 the new interns and kind of acted as their camp
12 counselor for lack of a better term. When they would
13 run astray or something, I would usually be the
14 person who would sit down with them and chat about
15 the dos and don'ts at the White House. From time to
16 time the Secret Service would talk to me about staff
17 that had been rude to their officers, either at the
18 gate or at an event. And vice versa, some staff
19 would come to me and we would sit down on an informal
20 basis and just chat about how staff have to be more
21 attentive to the career folks at the White House,
22 including Secret Service, and where necessary asking

1 the Secret Service to talk to their officers about
2 being a little more deferential to people in a hurry,
3 try to understand it. That kind of thing.

4 Q Is there someone in the Secret Service who
5 you had sort of a liaison relationship with?

6 A Several. Principally Arnold Cole, who is
7 assistant special agent in charge for the White House
8 division. And the reason that is is that part of the
9 process of the past issue of working at the White
10 House, my responsibilities is that I would then
11 forward, once I had adjudicated the materials on that
12 particular staff, or I would send them on to this
13 person, Arnold Cole.

14 Q Anyone else on the Secret Service that you
15 interacted with regularly?

16 A Yeah, Inspector Dennis Martin of the
17 uniformed division. And he would be the person that
18 I would talk to from, I imagine on a weekly basis, if
19 not biweekly, friendly chitchat and also about the
20 officers and staff, how to make life better for
21 everybody. And again, this was kind of informal on
22 that end. The first officer, first Secret Service

1 agent as a formal role.

2 Q Mr. Cole is a formal role and more informal
3 role with Mr. Martin?

4 A Right. I wasn't specifically assigned to
5 talk to Mr. Martin, it just sort of turned out that
6 way.

7 Q Okay. And part of your job, I take it, was
8 to facilitate getting White House passes for White
9 House employees; is that correct?

10 A Correct.

11 Q Did you deal with anyone in the White House
12 counsel's office as part of that responsibility?

13 A Yes. It came -- before the backgrounds
14 would come to me, they would go to Mr. Kennedy and
15 the other counsels as well when they operated in that
16 role.

17 Q Did you ever have an occasion to deal with
18 Mr. Foster in connection with that?

19 A With backgrounds, no. Not to my knowledge.

20 Q And you yourself, Mr. Livingstone, had a
21 White House pass, I take it?

22 A Yes.

1 Q And did that pass enable you to move freely
2 within the White House complex?

3 A The passes are really building passes.
4 They don't necessarily signify where can you move on
5 the surface. They do, but they don't mean that you
6 can move freely. The idea is that you need to be
7 where you need to be. They're like -- I wouldn't go
8 to the residence and go to living quarters, and I
9 wouldn't hang out around chief of staff's office.

10 Q But if you wanted to walk into the west
11 wing at any given time on your work day, you could do
12 that with the pass you have?

13 A That's correct.

14 Q Did you drive to the White House routinely,
15 or did you arrive in some other way?

16 A Routinely I would drive to work.

17 Q Mr. Livingstone, in the White House complex
18 where is your office?

19 A I'm located in the Executive Office
20 Building in room 84.

21 Q And has that been true throughout the
22 period of your employment?

1 A Yes, sir.

2 Q And -- I take it there are some number of
3 employees who work for and report to you?

4 A Yes. I have a small staff.

5 Q How large?

6 A I have presently two paid staff.

7 Q What are their names?

8 A Presently it is Lisa Wetzl, W-e-t-z-l, and
9 then Edward Hughes -- Edward Hughes.

10 Q In July 1993, were Mr. Wetzl and Mr. Hughes
11 working for you at that time?

12 MR. BEN-VENISTE: Ms. Wetzl.

13 MR. JOHNSON: Thank you.

14 THE WITNESS: Ms. Wetzl -- I don't believe
15 Mr. Hughes was here. If he was, he was as an intern.

16 BY MR. JOHNSON:

17 Q Was there anyone else on your staff in July
18 1993?

19 A Yes, sir. Ms. Mari Anderson, M-a-r-i
20 Anderson.

21 Q That's --

22 A That's it.

1 Q Do you recall whether or not there were any
2 interns working in your office at that time?

3 A Yes. I remember one, for -- Erin
4 Penipento, which -- I'm not going to be able to help
5 you out on that spelling. She was only there for two
6 months.

7 MR. BEN-VENISTE: What was the first name?

8 THE WITNESS: Erin.

9 BY MR. JOHNSON:

10 Q It was a woman?

11 A Yes.

12 Q Anyone else?

13 A Ms. Melissa Evintash worked with us. She
14 worked as a volunteer for me at the inaugural, and
15 she worked from time to time throughout the summer.
16 And there may have been other people, but I don't
17 recall.

18 Q You have mentioned your job
19 responsibilities narrowed somewhat since July 1993;
20 is that correct?

21 A More specific, I think it would probably be
22 a more accurate way to put it.

1 Q Maybe you can shed some light on the
2 differences between your responsibilities now and
3 then.

4 A Well, I used to take a more active role in
5 when officers would have complaints and that type of
6 thing, and I think the Secret Service prefers to
7 handle that internally. I don't seem to do that
8 anymore. And I don't have time to do lawn events and
9 things like that as much as I used to help out with.

10 Q How would you describe your relationship
11 with the Secret Service in July of 1992?

12 A I think professional, cordial.

13 Q Had you had any disagreements or other sort
14 of -- let me just leave it at that. To the best of
15 your knowledge, had you had any disagreements with
16 any Secret Service officials in July of 1993?

17 A Today I cannot recall anything in July. I
18 know that prior to July there are a couple of
19 instances that I don't remember specifics but they
20 were usually -- like I thought an officer was rude to
21 somebody or something; I had actually witnessed
22 something, and I would -- rather than talk to them

1 about it, I would just talk to their supervisor and
2 say I thought this person was tough on somebody.

3 Q Other than recalling generally that may
4 have happened, do you have any specific recollection
5 of an incident or event that comes to mind?

6 A Not this morning.

7 Q Okay. Let me -- I'll ask you the same
8 question about each of the following individuals, and
9 that question is whether or not you would have
10 recognized them by their face prior to Mr. Foster's
11 death on July 20th of 1993. Obviously you would
12 recognize Mr. Kennedy?

13 A Correct.

14 Q Mr. Nussbaum?

15 A Correct.

16 Q Meaning yes, you would have recognized him?

17 A I'm sorry. Yes.

18 Q Cliff Sloan?

19 A Yes.

20 Q Steve Neuwirth?

21 A Yes.

22 Q David Watkins?

1 A Yes.
2 Q Maggie Williams?
3 A Yes.
4 Q Evelyn Lieberman?
5 A I don't know if Evelyn worked there then.
6 Maybe she did; I don't know. I know her now because
7 of her current job in the press office. I don't know
8 that I knew her before then. I don't know that I
9 knew her then.
10 Q Patsy Thomasson?
11 A Yes.
12 Q I take it you would have recognized
13 Mr. McLarty?
14 A Yes.
15 Q Mr. Gearan?
16 A Yes.
17 Q Mr. Gergen?
18 A Yes.
19 Q Dee Dee Myers?
20 A Yes.
21 Q William Burton?
22 A Yes.

1 Q Would you have recognized Mr. Nussbaum's
2 assistant, Ms. Pond?
3 A Yes.
4 Q What about Mr. Foster's assistant,
5 Ms. Gorham?
6 A I don't recall her. I remember the name,
7 but I can't place the name to a face.
8 Q Let me show you a document which, for the
9 record, bears document production number Z000463 and
10 appears to be a handwritten document on a legal sized
11 piece of paper. It bears a signature at the bottom
12 and the date 7/23/93 if I'm reading it correctly.
13 (Exhibit Z463 identified.)
14 (Witness reviewed the document.)
15 BY MR. JOHNSON:
16 Q Take as much time as you like to read the
17 document, Mr. Livingstone. My first question is have
18 you ever seen it before?
19 A Yes, I have seen this document before.
20 Q Okay. Could you tell us what it is?
21 A To the best of my ability, I seem to
22 remember preparing this at the request of the senior

1 staffer.

2 Q This document is in your handwriting, I
3 take it?

4 A Yes. It's my handwriting.

5 Q And is that your signature at the bottom of
6 the page?

7 A It is. But specifically there is some
8 handwriting at the top which is not my handwriting,
9 and I don't know what it means.

10 Q At the top of this exhibit there's an entry
11 before the first timed entry at the upper left-hand
12 corner. Is that the one you're referring to?

13 A Yes, sir.

14 Q Are you able to read that handwriting?

15 A No, not clearly.

16 Q Okay. But you are certain that's not your
17 handwriting?

18 A Positive.

19 Q The date on the bottom of this appears to
20 me to say 7/23/93. Have I read that correctly?

21 A That's what it says.

22 Q To the best of your knowledge, is that the

1 date you prepared this document?

2 A I can't imagine signing a document putting
3 the wrong date, but it's possible that it has the
4 wrong date. I don't know. I don't recall being
5 precise about it.

6 Q Your best recollection today is that would
7 have been an accurate date when you wrote it down?

8 A Yes, sir.

9 Q And I think you said that you were asked to
10 prepare this by a senior staffer; is that correct?

11 A The recollection I have, that would be
12 correct.

13 Q Who asked you to prepare it?

14 A I'm not sure. I think it was in response
15 to trying to get some information. I had prepared an
16 earlier document which started around my time of
17 being involved in identifying Mr. Foster's body, and
18 I think there were some things that they wanted
19 filled in if we knew the information or if I could
20 find the information out.

21 Q Let me show you another document bearing
22 document production number Z000494. It's a two-page

1 document; it's -- the copy I have is two pages, but
2 the next page is 000496. And it says at the top
3 "report from Craig Livingstone, July 21, 1993."

4 (Exhibit Z494 and Z496 identified.)

5 (Discussion off the record.)

6 BY MR. JOHNSON:

7 Q Let me just clarify for the record. As
8 produced to us, this is a three-page document bearing
9 production number 000494 through 496, but the middle
10 page, 495, is a blank page, and -- does yours say
11 "redacted" on it?

12 MR. BEN-VENISTE: I assume it's redacted
13 since it has, since it has a Bates stamp on the
14 bottom.

15 MR. JOHNSON: Typically they're stamped
16 "redacted" where redacted.

17 MR. COLE: And some with a blank page they
18 have numbered or like a back side of a piece of paper
19 is blank.

20 MR. TURK: I don't believe that is a
21 redacted page, but we can confirm that. I believe
22 that's some kind of mistake in the production.

1 MR. JOHNSON: Okay.

2 BY MR. JOHNSON:

3 Q Mr. Livingstone, you have -- sorry for that
4 diversion. You testified a moment ago that you
5 prepared an earlier document. Let me show you this
6 document which we have just identified for the record
7 and ask you to take a moment to review it.

8 (Witness reviewed the document.)

9 THE WITNESS: Yes. This is the document
10 that I have -- worked on the day after Mr. Foster's
11 death.

12 BY MR. JOHNSON:

13 Q When you said you had prepared an earlier
14 document, is this the document to which you referred?

15 A Yes.

16 Q Why did you prepare that document?

17 A I remember talking to a couple of different
18 individuals about preparing a chronology from
19 Mr. Foster's death through, I think, the meeting that
20 we had the next day with the Park Police and
21 counsel's office and some senior White House
22 officials which are identified in this document.

1 Q Who did you talk with about preparing that
2 document?

3 A I believe that I talked to Mr. Gearan, Mark
4 Gearan, and Mr. Watkins and Mr. Kennedy. And perhaps
5 others, but I don't recall.

6 Q Now when you say you talked to them, I just
7 need to be clear for the record. Did they ask you to
8 prepare this document, or did, in the course of
9 preparing this document, you talk to them?

10 A Specifically, I don't believe anybody said
11 Craig, do this. But I can't recall. I remember some
12 people said it was a good idea, why don't you give it
13 a shot.

14 Q Is it possible that -- that you suggested
15 it to some people and they said it sounds like a good
16 idea?

17 A Absolutely possible.

18 Q Why did you think to prepare this
19 chronology?

20 A I thought it would be important to write
21 down the facts of the evening and my involvement to
22 the extent of where I thought it would be helpful to

1 get the details to information which I was aware of.
2 So when staff would need to talk to press or other
3 individuals, that they would have some sort of
4 recollection from somebody that was there.

5 Q Okay. When you -- you mentioned "talk to
6 press." Was it also in your mind that it would be
7 useful in discussing the events of that evening with
8 Park Police or other law enforcement individuals?

9 A I don't know. Today I don't have a
10 recollection of thinking of that. But it wouldn't be
11 inconsistent with the way I would do things.

12 Q In preparing -- let me show you another
13 document that is identified as Z000497 and 498, which
14 appears -- let me say for the record appears to be
15 another chronology beginning July 20th, I assume 1993
16 although the document doesn't say that. The question
17 is the same, Mr. Livingstone, whether you have ever
18 seen that document before.

19 (Exhibit Z497 and Z498 identified.)

20 (Discussion off the record.)

21 (Witness reviewed the document.)

22 THE WITNESS: I don't believe I have seen

1 this document before.

2 BY MR. JOHNSON:

3 Q Okay. It follows, then, that you didn't
4 prepare this document?

5 A No, I don't believe I did.

6 Q Okay. Part of the reason I have shown you
7 this -- I'm taking back, for the record, the exhibit
8 identified as 497 and 498 and leaving in front of
9 you, Mr. Livingstone, the other two chronologies that
10 you testified you did prepare. The reason I'm
11 showing you the documents is I want your best
12 recollection of the events of July 20th, and if it's
13 useful for you to refer to the chronologies, feel
14 free to do so.

15 A Thank you.

16 Q Let me first of all ask you a couple of
17 detail questions about the chronologies, referring
18 now to the handwritten document which is 463. You
19 have testified that the handwriting at the top of
20 that page is not your own; is that correct?

21 A Yes, sir.

22 Q And I think I asked you if you could read

1 what that says, and you said you weren't sure?

2 A I can read a couple of the words.

3 Q What do you think it says?

4 MR. TURK: I'm going to have to object to
5 asking Craig to guess at what someone else's
6 handwriting says, Counsel. I mean, if there's a word
7 in there that you can clearly decipher, that's okay.
8 I certainly can't read it except for the word "in,"
9 and I'm not sure it's a good idea for Craig to be
10 guessing at what it says unless you can read it
11 clearly.

12 THE WITNESS: The only word I'm fairly
13 positive of is "in." Other than that, I'm not sure.

14 BY MR. JOHNSON:

15 Q You don't recognize that handwriting?

16 A No, sir.

17 Q In -- thanks. In preparing either of these
18 two chronologies, did anyone edit the chronologies?

19 A I don't know. I don't believe anyone
20 edited this simply because I wrote it in my own
21 hand. I don't remember the exact details of how this
22 came about, this -- excuse me, to be precise, the

1 typewritten document. I remember writing something
2 down or talking to someone and asking it to be done,
3 but I don't recall who. And as I recall, the FBI
4 found the document, not me.

5 Q Are we talking about the typewritten
6 document now?

7 A Yes, sir.

8 Q When you say they found it?

9 A They had some computer whiz come and check
10 the various offices.

11 Q They found it on your computer?

12 A I don't know which computer they found it
13 on. They didn't tell me.

14 Q And my question was whether or not someone
15 edited it, and you may have answered it and I may
16 have just missed it?

17 A To be precise, I don't recall sitting with
18 the individual when it was prepared, and I don't know
19 that it was edited. Looking at it, the facts look
20 correct as I recall them.

21 Q When you say "sitting with the individual,"
22 are you thinking of any particular individual --

1 MR. TURK: You mean the person who typed
2 it?

3 THE WITNESS: Correct.

4 BY MR. JOHNSON:

5 Q It's dated July 21, 1993 at the top. To
6 the best of your recollection, is that the day that
7 you prepared this chronology?

8 A Yes, sir. I seem to remember they needed
9 it fairly early in the afternoon.

10 Q In the course of preparing either the
11 typewritten chronology dated the 21st or the
12 handwritten one dated the 23rd, did you deliberately
13 omit from the chronology anything that occurred
14 within the time period covered?

15 A No, I did not deliberately omit anything
16 from either.

17 Q Okay. And I take it, therefore, that you
18 also didn't deliberately include in the chronology
19 anything that didn't occur?

20 A I deliberately did not include anything
21 that did not occur; correct.

22 Q Let me just get your -- and no one asked

1 you, I take it, to omit or include something that was
2 not accurate, I take it?

3 A That's correct. To be precise, some of
4 this information I asked the police for. I don't
5 know for a fact, for example, that a citizen called
6 the Fairfax fire rescue or the approximate time of
7 death. A lot of this information was given to me by
8 law enforcement.

9 Q Okay. Why don't I go back now to your
10 recollection of the events of July 20th, 1993. First
11 of all, what were your ordinary working hours at the
12 White House at that time?

13 A I'd say 9:00 -- at that time I was still
14 working pretty late, as a lot of the administration
15 was. 9:00 to 7:00, 8:00 p.m. Sometimes 9:00 to
16 6:00, of course, but most often I think I worked a
17 little later, rarely, if ever, earlier, though.

18 Q I take it at some point in time you learned
19 of Mr. Foster's death on the 20th; is that correct?

20 A Yes, sir.

21 Q How did you learn about Mr. Foster's death?

22 A To the best of my ability today, what I

1 remember is either the phone ringing or my pager
2 going off around 9:00 p.m. as I was arriving at my
3 residence. I can't remember precisely if I got a
4 phone call or got paged. It may have been both,
5 actually.

6 Q Okay.

7 A I called -- the reason I think it was a
8 page, I seemed to remember calling control, which is
9 the uniformed division of the Secret Service's watch
10 commander's office. And I was either told to call
11 Inspector Martin at this phone or he was connected.
12 I can't remember -- I can't recall. The idea is
13 that's the next thing that happened.

14 Q You spoke with Inspector Martin?

15 A Correct.

16 Q So just -- I hope I understand this.
17 There's an entry on your handwritten chronology which
18 says, appears to say "USSS" -- I take it Secret
19 Service -- "notifies Craig Livingstone at 9:00 p.m."
20 That's the notification you're just referring to?

21 A Right. Originally the first person I
22 talked to was just an officer on duty, and he either

1 connected me or I called Dennis Martin. I can't
2 recall which.

3 Q And those entries that appear before 9:00
4 p.m. that day, your basis of information for those is
5 things you've learned from others, I take it?

6 A Yeah. I think I talked to a major in the
7 Park Police and Inspector Martin and a couple others
8 trying to put all that information together.

9 Q Okay. What -- when you spoke with
10 Inspector Martin personally in the vicinity of 9:00
11 p.m. that evening, what did he tell you?

12 A Something along the lines of I have some
13 bad news, Vince Foster has been found dead,
14 apparently a suicide.

15 Q And what's the -- you don't remember any
16 more about that conversation, do you?

17 A No. Again, I'm sure that's not precise but
18 something along those lines.

19 Q You do recall specifically that it was your
20 assumption that it was a suicide and, say, not a
21 murder when you were first informed?

22 MR. BEN-VENISTE: His assumption?

1 MR. JOHNSON: Mr. Livingstone's
2 assumption.

3 MR. BEN-VENISTE: I thought he said he was
4 told in substance.

5 MR. JOHNSON: I'm asking a slightly
6 different question.

7 BY MR. JOHNSON:

8 Q Was your impression based on that phone
9 call?

10 A I think what I said Inspector -- Martin
11 said Mr. Foster had been found dead, apparently a
12 suicide.

13 Q And you didn't have any reason to think any
14 different at that time?

15 A No, sir. I don't recall even thinking
16 about it.

17 Q Okay. And what's the next thing you did?

18 A Again, because I talked to him a couple
19 times, that being Inspector Martin, shortly
20 thereafter, I think he said -- I think I asked him if
21 the White House knew and also if -- where the body
22 was going to be sent to. And I -- I made a couple

1 calls or a few calls thereafter. Immediately I
2 talked to the White House because I was concerned --
3 I had knowledge that the President was doing an
4 interview with Larry King, and I was concerned that
5 perhaps some eager producer might ask Larry King to
6 ask him a question on air, and that later proved not
7 to be true.

8 Q Who did you speak with at the White House?

9 A I spoke with a couple people. I believe I
10 spoke with Mark Gearan to make sure that Mr. McLarty
11 knew, and he said that they knew. And I asked if
12 anybody was going to identify the body, and they said
13 that Bill Burton was going. And I don't recall if I
14 volunteered to go because I know where Fairfax
15 Hospital is, or that specifically they asked me to
16 go, but what I seem to remember is that I said I
17 could drive out there to identify the body; I knew
18 where it was.

19 Q Now, the handwritten entry on the
20 handwritten chronology that I'm reading says
21 "Livingstone notifies COS," which I take it to mean
22 chief of staff; is that correct?

1 A Correct.

2 Q Did you speak personally with Mr. McLarty?

3 A I don't recall if I did. I remember
4 speaking to Mark Gearan at that time, I recall.

5 Q And you think Mr. Gearan told you that
6 Mr. Burton was going to identify the body?

7 A He had mentioned that Bill Burton was going
8 to go.

9 Q All right. What's the next thing you
10 recall?

11 A There was a pause in my conversation -- in
12 our conversation, that being Mr. Gearan and I, or the
13 person I believe to be Mr. Gearan. And they said why
14 don't you go to the hospital. That's a good idea.
15 And I said okay, I will call you from the hospital.
16 He said call as soon as you get there. I think I
17 talked to my dad or a neighbor next. I called a
18 neighbor because I was really upset about Mr. Foster,
19 and I didn't know if I should drive. I was just
20 upset.

21 Q Were you and Mr. Foster close?

22 A No. I would describe it -- do you work in

1 the Senate?

2 Q No.

3 A I would describe it -- if you worked here,
4 there's a chief of staff, and you're sort of a lower
5 level staff person who doesn't have a lot of
6 interaction with the chief of staff, you may be fond
7 of them, but you don't have any daily interaction.
8 And you probably know a lot more about them than they
9 about you. And he was always nice to me and always
10 made time to say hi in the hall. And I didn't have
11 any interaction with him. And I was upset that he
12 would do that.

13 Q So you spoke with a neighbor about possibly
14 driving you?

15 A No. I called, and my neighbor wasn't home.

16 Q Who else did you speak with before you
17 left?

18 A I called my father because I just wanted to
19 take a breath. And I was -- my dad said it was real
20 important to make sure there was a positive ID of the
21 body because he was in the military and he said he
22 remembered an instance or two where people had been

1 inappropriately notified, and it turned out not to be
2 the person. And he also said to make sure that I
3 keep a -- something consistent with a chronology,
4 that I should write down the things that from
5 henceforth on evolved.

6 Q And after that did you go to the hospital?

7 A I called Mr. Kennedy from my home.

8 Q Where did you reach Mr. Kennedy?

9 A At his home.

10 Q And did you notify Mr. Kennedy of
11 Mr. Foster's death?

12 A I did.

13 Q Did Mr. Kennedy already know, or were you
14 telling him something he hadn't heard before?

15 A No. His wife answered the phone and put
16 him on, and he muttered an expletive and seemed very
17 upset. And I said I was sorry that I had to let him
18 know this way, but would he like to go to the
19 hospital and help me identify the body, and he said
20 that of course he would. And my concern for doing
21 that was that I'm a staffer, and I thought that if it
22 is, in fact, a suicide, and Mr. Foster has to be

1 identified, that it would be better coming from
2 someone who knew him personally, rather than me.

3 Q Okay. And then, I take it, you went to the
4 hospital?

5 A Yes, sir.

6 Q Did you pick up Mr. Kennedy or meet
7 Mr. Kennedy there?

8 A We met at the hospital.

9 Q In your chronology, if I'm reading this
10 correctly, it suggests that you met about 9:30 at the
11 hospital. Is that a pretty good recollection?

12 A Yeah. I don't even recall right now. But
13 I feel confident that the chronology is correct.

14 Q Okay. Other than Mr. Kennedy, who else was
15 present at the hospital?

16 A We met an officer from the Fairfax police.

17 Q Were there any representatives of the Park
18 Police there?

19 A I don't believe so.

20 Q And you and Mr. Kennedy identified the
21 body, Mr. Foster's body; is that right?

22 A Right. We had to wait for some time, but

1 we were escorted by, I believe it was a senior nurse
2 who took us to a viewing room. The curtain was drawn
3 back.

4 Q I'm just going to read your typewritten
5 chronology for one second if I could, please. I'm
6 referring now to document number 000494, and it
7 indicates near the bottom of the page -- and I'll
8 read you the thing I want to question you about --
9 "during this time period 9:30 to 9:45, phone calls
10 were received and exchanged between Kennedy, Bernard
11 Nussbaum and Webster Hubbell from my location."

12 Let me first of all ask for clarity: Do
13 you mean you spoke with Mr. Nussbaum, or Mr. Kennedy
14 spoke with Mr. Nussbaum?

15 A To be precise -- I'm not sure today. I
16 believe what I meant in that note is at different
17 points when I was on the phone that I recognized
18 those voices, but I can't be precise today.

19 Q And the same would be true of Mr. Hubbell?

20 A Yes, sir.

21 Q Do you recall anything about your -- the
22 conversations that you participated in or overheard

1 involving Mr. Nussbaum or Mr. Hubbell?

2 A They were informational in nature: that we
3 had arrived at the hospital, that Bill Kennedy was
4 there, that we were waiting to see the body and it
5 was taking some time.

6 Q At any time during those telephone
7 conversations or any other time before you were able
8 to view Mr. Foster's body, was there any discussion
9 that you participated in or overheard about whether
10 or not Mr. Foster's office should be sealed or
11 secured?

12 A I can't recall today if that came up during
13 that conversation.

14 Q Okay. Do you recall it coming up at all on
15 the evening of the 20th, at any time?

16 A I can't recall specifically. I know that
17 we did talk about it at some point that day or the
18 next day, specifically the next day I remember
19 talking about it.

20 Q But I want to focus for the moment on the
21 late evening hours of the 20th or the early morning
22 hours of the 21st.

1 A At the hospital I don't recall talking
2 about it.

3 Q What about any time after you may have left
4 the hospital?

5 A Specifically the next day I remember
6 talking about it. I had asked -- I think it was
7 Dennis Martin, Inspector Martin, but certainly
8 someone from the Secret Service, if there was
9 anything I could help to do to around the events of
10 Mr. Foster's death. And somebody suggested that his
11 office should be closed off, and I can't recall
12 specifically when that was, but it was that morning.

13 Q Okay.

14 A The -- the morning of the 21st, the day
15 after Mr. Foster's death.

16 Q Was it light out or dark out when you first
17 recall discussing it?

18 A I don't recall.

19 Q And you don't recall who you discussed --
20 I'm sorry. I think you did say it was Inspector
21 Martin?

22 A I think it was.

1 MR. TURK: Or somebody else from the Secret
2 Service.

3 THE WITNESS: From the Secret Service.

4 BY MR. JOHNSON:

5 Q Did you ever discuss on the late evening
6 hours of the 20th or early morning hours of the 21st
7 with Mr. Kennedy whether or not Mr. Foster's office
8 should be sealed or secured or whether anyone had
9 requested that it be?

10 A Today I don't recall having any
11 conversation about that. I think that the next
12 morning we may have talked about it. But not the
13 night before. I don't recall.

14 Q What do you recall about your conversation
15 with Mr. Kennedy the next morning?

16 MR. BEN-VENISTE: On this subject?

17 MR. JOHNSON: On this subject, yes.

18 THE WITNESS: I think just -- general
19 commiseration.

20 MR. TURK: The question is what do you
21 recall talking to Mr. Kennedy about on the morning of
22 the 21st, if at all, about sealing Vince Foster's

1 office.

2 THE WITNESS: Thank you. I seem to
3 remember a conversation -- I can't place it to where,
4 but I think it was shortly before or shortly after
5 our meeting with the Park Police -- talking with
6 Mr. Kennedy and Mr. Nussbaum about whether or not
7 they wanted to get a Secret Service, a uniformed
8 member of the Secret Service to be posted at
9 Mr. Foster's office.

10 BY MR. JOHNSON:

11 Q Okay. Let me just try and -- that's very
12 helpful. Let me try to be as clear as I can be.
13 What time did you arrive at the White House for work
14 on the morning of the 21st?

15 A I believe that I arrived shortly after 8:00
16 a.m.

17 Q Now, before 8:00 a.m. on the morning of the
18 21st, do you recall any conversations with anyone on
19 the topic of whether or not Mr. Foster's office
20 should be sealed or secured?

21 A I can't recall any today.

22 Q Okay. What did you do on the evening of

1 the 20th after you identified Mr. Foster's body?

2 A We notified the White House. I called -- I
3 believe that I reached Mack McLarty, and I put
4 Mr. Kennedy on the phone, and he proceeded to tell
5 him that it was Mr. Foster.

6 Q What's the next thing you remember?

7 A Somewhere around that time. I don't
8 remember the chronology exactly, but I was talking
9 with either Gearan or someone else that did they want
10 me to notify the hospital switchboard if they got any
11 inquiries or calls who they should call, who they
12 should be referred to. And he told me to have them
13 call Dee Dee Myers at the White House, something to
14 that effect.

15 Q Okay.

16 A And I notified -- I think I notified the
17 switchboard, but I may have notified someone in the
18 administration.

19 Q What's the next thing that happened?

20 A We left the hospital.

21 Q We, meaning who?

22 A Mr. Kennedy and I left the hospital.

1 Q Okay. I neglected to ask you, did you
2 drive to the hospital?

3 A I drove my car to the hospital.

4 Q Alone?

5 A Correct.

6 Q And did you and Mr. Kennedy leave the
7 hospital together?

8 A Yes, we did.

9 Q Did you get in the same car or separate
10 cars?

11 A As I recall it, I drove -- as I recall it,
12 I drove Mr. Kennedy in my car to his house.

13 Q Do you know how Mr. Kennedy got to the
14 hospital?

15 A He drove his car.

16 Q So you left Mr. Kennedy's car at the
17 hospital?

18 A Correct. He was pretty upset.

19 Q Okay. Then you drove to the Foster
20 residence; is that correct?

21 A No, sir, we drove to Mr. Kennedy's house.

22 Q Okay. What was your --

1 (Discussion off the record.)

2 BY MR. JOHNSON:

3 Q What was your purpose in going to
4 Mr. Kennedy's home?

5 A We picked up his wife.

6 Q Okay.

7 A And we switched cars.

8 Q Moving from your car to another of
9 Mr. Kennedy's cars?

10 A Correct.

11 Q And then what happened?

12 A The three of us drove to Mr. Foster's
13 house.

14 Q And up until the time that the three of you
15 arrived at Mr. Foster's house, had there been any
16 discussion at all about the contents of Mr. Foster's
17 office?

18 A None.

19 Q Did you or Mr. Kennedy or you and anyone
20 else discuss whether or not there had been a suicide
21 note?

22 A I don't know when that came up. It came up

1 sometime during the course of the evening, but I
2 don't recall. I think it was later, actually.

3 Q What -- putting aside for the moment the
4 fact that you can't specifically recall when it came
5 up on that evening, what do you recall being
6 discussed about a suicide note?

7 A The way I remember it is that Ms. Patsy
8 Thomasson arrived later in what I thought was a White
9 House car.

10 Q Arrived where?

11 A At the Foster home.

12 Q Okay.

13 A And shortly thereafter I seem to remember
14 hearing some people say that they hadn't found a
15 note.

16 Q What time do you think Ms. Thomasson
17 arrived at the Foster home?

18 A I can't say. It was after our arrival.

19 Q What time did you arrive?

20 A I don't recall specifically. I think it
21 was around 10:30, 11:00; 10:30 to 11:00. I don't
22 recall specifically what time.

1 Q It was before midnight, though? Are you
2 clear on that?

3 A Yes, sir.

4 Q Okay. And how long had you been there when
5 Ms. Thomasson arrived?

6 A I can't say.

7 Q Okay. Can you put any time frame on it at
8 all? More or less than an hour?

9 A No, sir.

10 Q You just can't place it in time at all?

11 A No, sir. I cannot place any time on it at
12 all.

13 Q But you do recall that Ms. Thomasson did
14 arrive and that sometime later you heard conversation
15 to the effect that they had not found a note; is that
16 right?

17 A Yes.

18 Q Has not found a note where?

19 A I don't recall specifically if they said
20 where.

21 Q Do you recall whether or not there was any
22 discussion about whether anyone had looked in

1 Mr. Foster's office for a note on that evening?

2 A Today I don't have a specific recollection
3 of that, no, sir.

4 Q Other than a specific recollection, did you
5 have an impression one way or the other based on
6 anything you had heard?

7 A I seem to have an impression that may have
8 come up sometime during the evening.

9 Q That what may have come up?

10 A That someone may have said they looked in
11 the office. But I don't recall specifically if it
12 was that evening or the next day.

13 Q Do you recall who may have said it?

14 A No.

15 Q Was it Ms. Thomasson?

16 A I don't recall.

17 Q Do you recall anymore about it than that?

18 A No.

19 Q When you arrived at the Foster home that
20 evening, your estimate -- and I realize it's an
21 estimate -- was around 10:30 or 1:00. Who was
22 there -- 11:00. Who was there?

- 1 A The President apparently had just arrived.
2 His vehicles were parking.
3 Q Why do you say "apparently"? Did you not
4 go in the home?
5 A I say he apparently just arrived because
6 when we arrived, his cars were parking.
7 Q Did you see the President?
8 A Yes, I did.
9 Q Who else was there?
10 A Well, for sure Mr. Kennedy and
11 Mrs. Kennedy. I believe some of Mr. Foster's
12 relatives, one or two of his kids. I think I
13 remember seeing one of his sons. I don't recall
14 specifically anyone else there at that moment. I do
15 remember people that were there that evening, but --
16 Q Okay. And the distinction you're making is
17 I asked you who was there when you arrived, and I
18 take it you recall that people arrived sometime later
19 after you arrived; is that right?
20 A Or perhaps they were in the house. I don't
21 know. I don't know that they arrived later.
22 Q Okay. My questions are obviously not very
-

- 1 precise here, so why don't I back up a step. In the
2 time that you were there that evening, putting aside
3 when they may have arrived, who did you see there?
4 A I remember seeing Mr. Hubbell, Webster
5 Hubbell. Bill Kennedy and Mrs. Kennedy, of course.
6 I think Mr. Watkins, David Watkins; I'm not positive,
7 though. Mr. Hubbell. Patsy Thomasson. David
8 Gergen. There were other people there, but I just
9 can't recall at this moment.
10 Q Just before we break for lunch, let me see
11 if I can tie this down a little bit. Is it at the
12 Foster home that you recall some conversation about
13 whether or not a suicide note had been found?
14 A I seem to have a recollection that people
15 had asked if they had found a note and overhearing
16 people say no, they had not found a note.
17 Q And you can't place who any of the speakers
18 were in that conversation; you just have a general
19 recollection of that having occurred?
20 A Correct.
21 Q Now, you also say that you formed an
22 impression that someone had looked in Mr. Foster's

1 office for a note. Did you form that impression
2 while at the Foster home that evening?

3 A I don't know that I said anybody went in
4 his office. I think I said had anybody found a note.

5 Q I'm sorry. Perhaps I misunderstood you. I
6 thought you also said you had the impression that
7 someone at least went in his office to look for it?

8 A Yes. Excuse me. I had the impression that
9 someone had checked.

10 Q And did you gain that impression while at
11 the Foster residence that evening?

12 A I'm confused whether it was that evening or
13 the next day. I don't have a specific recollection.

14 Q And while -- including the entire time you
15 were at the Foster residence that evening, had there
16 been any discussion to your knowledge about whether
17 or not Mr. Foster's office should be sealed or
18 secured?

19 A I know that I was involved in a
20 conversation like that; I don't know that it happened
21 that night or the next morning. I just can't recall
22 specifically when was the first time we talked about

60

1 it. I don't believe we talked about it at the house,
2 but I'm not positive.

3 Q Is there anything that you can think of
4 today that might refresh your recollection about
5 that?

6 A I don't know. It would probably be helpful
7 if I could review my first testimony with the FBI.
8 It's been a year, I think, since then, and I just
9 don't recall.

10 Q Okay. How long were you at the Foster
11 residence that evening?

12 A Several hours, couple hours.

13 Q In your typewritten chronology it says that
14 around 1 -- "we were at the Foster home until
15 approximately 2:00 a.m." Is that consistent with
16 your recollection today?

17 A Yes, sir.

18 Q Okay. It also says "at around 1:30 a.m.,
19 several vehicles responded to the address. They
20 sprayed the block and left around 1:30 a.m." What
21 kind of vehicles?

22 A They were press trucks, the kind of trucks

1 that take video, usually, of events, car accidents,
2 that kind of stuff. They didn't have any markings on
3 them.

4 Q When you say they "sprayed the block," what
5 did you mean by that?

6 A Well, what the press does is broadcast
7 press will take a picture of the house and the
8 environment.

9 Q They shot video pictures of the
10 environment?

11 A Right. In fact, one of them was taking a
12 picture of the wrong house, and I pointed out the
13 right house to them.

14 MR. JOHNSON: Why don't we stop now for
15 lunch.

16 (Whereupon, at 12:30 p.m., the deposition
17 was recessed, to be reconvened at 1:30 p.m. this same
18 day.)
19
20
21
22

1 AFTERNOON SESSION (1:42 p.m.)

2 Whereupon,

3 CRAIG LIVINGSTONE

4 resumed the stand and, having been previously duly
5 sworn, was examined and testified further as follows:

6 EXAMINATION (Continued)

7 BY MR. JOHNSON:

8 Q I think, Mr. Livingstone, when we broke for
9 lunch we were talking about the events that you
10 recall having occurred at the Foster residence in the
11 early morning hours of July 21st, 1993. And you were
12 telling me about the news media who showed up and
13 shot news video of the Foster residence. What time
14 did you actually leave the Foster residence that
15 evening?

16 MR. TURK: I think you asked that before
17 lunch, Kip, and he said around 2:00.

18 THE WITNESS: Yeah, I think that's --
19 looking at my chronology that I prepared back in July
20 of 1993, it says I left around 2:00 a.m.

21 BY MR. JOHNSON:

22 Q Did you leave with Mr. and Mrs. Kennedy?

1 A I can't recall if Mrs. Kennedy was with us
2 today. I know that Mr. Kennedy was with us.

3 Q When you left?

4 A When we left the Foster home.

5 Q It's possible Mrs. Kennedy stayed with
6 Mrs. Foster?

7 A To answer your question specifically, I
8 can't recall if she came back to the house with us.

9 Q Okay. Where did you go after you left
10 Mr. Foster's home?

11 A We left Mr. Foster's home and went directly
12 to Mr. Kennedy's home.

13 Q Okay. And then what happened?

14 A I suggested to him that I could take my car
15 and drive him out to the hospital to get his car so
16 that he wouldn't have to deal with it in the morning.

17 Q And is that what you did?

18 A And that's what we did.

19 Q Okay. So you dropped Mr. Kennedy off at
20 the hospital, the hospital being Fairfax Hospital
21 where Mr. Foster's body was?

22 A Yes, sir.

1 Q And you dropped him off there at what time,
2 approximately?

3 A I don't recall. I think it was probably
4 about a 15-, 20-minute drive.

5 Q So sometime before 3:00 in the morning on
6 the morning of the 21st; is that a fair estimate?

7 A Yes, sir.

8 Q And do you recall anything about your
9 conversations with Mr. Kennedy after leaving the
10 Foster residence?

11 A I seem to remember mentioning to him that I
12 might stop by Mr. Foster's house later that morning
13 to see if there might be any press activity around,
14 the morning news shows.

15 Q Do you remember anything else?

16 A No. I don't recall anything specific. I
17 was -- actually, I think I was pretty quiet.

18 Q So after you dropped Mr. Kennedy off at
19 Fairfax Hospital, what did you do next?

20 A I went directly to my residence.

21 Q Okay. And I'm going to just recover these
22 chronologies from you now because I think -- I'm

1 sorry. I misspoke. We are now beyond the time frame
2 on the handwritten chronology, is that correct, which
3 ends with the positive identification of the body?

4 A Yes, sir.

5 Q And we'll just take this one back. Feel
6 free to refer to the other one, if you like. What's
7 the next thing you recall, Mr. Livingstone, in
8 connection with Mr. Foster's death?

9 A Getting up a couple hours, few hours later,
10 and doing my best effort to get to his house around
11 what time I would have thought the morning news shows
12 would be, which I seem to remember being around 6:30,
13 maybe a little before.

14 Q Your chronology says "on Wednesday July
15 21st I drove by the house at 6:30 a.m. and stayed
16 until 8:00 a.m. There was no press activity." Is
17 that your recollection today?

18 A Yes. I can't recall if there was or
19 wasn't.

20 Q Did you sit in your car outside the house?

21 A There was -- what I recall, it's a one-way
22 street, and I remember parking on the right side of

1 the street as you drive past the Foster home. I was
2 about, I don't know, seven, eight car lengths past
3 their home on the other side of the street, facing
4 away from their house, and I stayed in the car most
5 of the time.

6 Q Did you go in Mr. Foster's home at any time
7 that morning?

8 A No, sir.

9 Q Did you make your presence known to the
10 Foster family, or did you stay outside?

11 A No, sir.

12 Q I asked the question so badly that -- did
13 they know you were there, to the best of your
14 knowledge?

15 A I had no contact with them, and I don't
16 know if they knew I was there.

17 Q Did you see anyone come or go from
18 Mr. Foster's home that morning?

19 A Not that I recall.

20 Q Did you talk to anybody on the telephone
21 while you were in the car?

22 A I can't recall who I spoke with, but either

1 when I was ready to leave or shortly after I had left
2 the Foster home to return to the White House I had
3 tried to reach somebody in the press office to let
4 them know that I was coming back and was there any
5 interest in having someone come and sit to see if
6 press were coming.

7 Q Outside the Foster home?

8 A Yes, sir.

9 Q And was there?

10 A There wasn't, to the best of my knowledge,
11 wasn't any interest in sending anybody.

12 Q Okay.

13 A I can't recall if I spoke to somebody about
14 that specifically, but that was my intent of calling
15 the White House.

16 Q When you left the Foster home in the
17 vicinity of 8:00 a.m. on the morning of the 21st,
18 where did you go?

19 A I drove directly from the Foster home to
20 the parking lot outside the White House on the
21 southwest side.

22 Q Okay. How long is that drive? How long

1 did it take you?

2 A I think it's probably like 10, 10 minutes.
3 I don't know. It's not very far.

4 Q Okay. I realize this is two years ago and
5 I don't mean to imply greater precision than is
6 possible, but more or less, what time did you arrive
7 at the White House that morning?

8 A I believe that I arrived at the White House
9 at around 8:14, something like that, because the
10 Secret Service said that that's when my pass showed
11 me as entering the White House. And I don't believe
12 that I entered the White House at any other time;
13 therefore, I believe that's an accurate accounting of
14 my arrival at the White House.

15 Q Okay. When did you learn that the Secret
16 Service said that your pass showed you arriving at
17 8:14 in the morning?

18 A It was sometime later. I don't recall
19 specifically when.

20 Q Did you ask them to search their records
21 and see what time you arrived that morning?

22 A I did. I asked if it was possible.

1 Q Who did you ask that?

2 A Arnold Cole, the Secret Service agent.

3 Q Why did you ask Mr. Cole to do that?

4 A Because I could not specifically remember
5 exactly when I arrived, and I knew that I had only
6 come in once, and I wanted to know when I arrived.

7 Q Why was it important to you to know when
8 you arrived that morning?

9 A Well, specifically because it's during the
10 course of the investigation, and people were asking
11 me to establish when I arrived. And I knew that I
12 had arrived directly to the White House after
13 making -- trying to reach the White House on my
14 cellular phone, and I knew it was a short time
15 thereafter but didn't know just exactly when.

16 Q It's been reported that employees of the
17 White House may have stayed -- stated that they
18 observed you in the west wing on the early morning of
19 the 21st of July, 1993. Have you heard those
20 reports?

21 A I have read those newspaper reports.

22 Q And are those the -- is that the

1 information that made you want to know precisely what
2 time you arrived on the morning of the 21st?

3 MR. BEN-VENISTE: You know, I have to be
4 hypertechnical about this, Kip, but I'm unaware of
5 even in press reports any individuals claiming that
6 they saw Mr. Livingstone at some particular time. If
7 you're referring to the same allegation regarding a
8 uniformed Secret Service officer, my recollection is
9 that it's one individual.

10 MR. JOHNSON: I agree with that. I'm just
11 not sure what you're correcting about what I said.

12 MR. TURK: You said, I think, employees of
13 the White House.

14 MR. JOHNSON: Okay. I stand corrected.

15 BY MR. JOHNSON:

16 Q However precisely we want to state it, that
17 information that Mr. Ben-Veniste described more
18 accurately than I did, is that why you went and
19 got -- tried to find out what time you arrived at the
20 White House that morning?

21 A I don't recall specifically. I think it
22 was through the process of being -- appearances

1 before the grand jury and being asked specifically
2 about times.

3 Q Okay. Whatever the reason, your best
4 recollection today is you arrived at the White House
5 around 8:14?

6 A Whatever the report says, I feel
7 comfortable that that's right. I think give or take
8 a minute or two. I don't remember the exact time
9 they said.

10 Q What did you do after you arrived at the
11 White House that morning?

12 A I don't have a very good recollection of
13 that day. I was very tired. Obviously pretty shaken
14 up. With that in mind, I remember arriving -- the
15 only thing that I specifically remember as related to
16 a time would have been the meeting with the --
17 Mr. Nussbaum and the rest of those people listed.

18 Q And you're referring now to your
19 typewritten chronology, which is document number 494
20 through 496; is that correct?

21 A Yes, sir.

22 Q And that identifies that meeting, I

1 believe, as beginning in the vicinity of 11:00 a.m.
2 on the 21st; is that right?

3 A Yes, sir.

4 Q Do you have any recollection of your
5 activities between 8:14, more or less, and the
6 beginning of that meeting on the 21st of July, 1993?

7 A I remember it was -- I remember visiting a
8 few offices. Not for anything specific other than to
9 check in with folks. Again general
10 commiseration-type things.

11 Q Whose office do you remember visiting?

12 A I stopped in the reception area of
13 counsel's office. I stopped by the press office. I
14 remember talking to some other folks in the hallways,
15 again just about nothing really specific.

16 Q Okay --

17 A Wasn't it too bad about Mr. Foster, that
18 type of thing.

19 Q You say I you stopped by the reception area
20 of the counsel's office, by that do you mean the
21 White House counsel's office?

22 A Yes.

1 Q And the reception area is the reception
2 area outside of Mr. Foster and Mr. Nussbaum's
3 personal offices; is that right?

4 A Yes, sir.

5 Q About what time did you stop by there that
6 morning?

7 A I don't recall specifically. I know I was
8 there a couple different times, both before and after
9 the meeting at 11:00.

10 Q Okay. You say you were there a couple
11 different times. Do you mean you were in the White
12 House counsel's reception area a couple different
13 times?

14 A Yes, sir.

15 Q How many times were you in the White House
16 counsel's reception area before the meeting that
17 began at approximately 11:00 a.m. that morning?

18 A I don't recall specifically. I think --
19 for sure once, maybe twice.

20 Q Okay. Maybe more than twice or you just
21 think it was one or two?

22 A It's possible, but I don't recall.

1 Q Okay. And why did you go there?

2 A I work with those people. I mean,
3 particularly Ms. Pond I knew. It's my office. Just
4 to visit.

5 Q When you say it's your office, what do you
6 mean?

7 A It's the office I report to, that I work
8 under.

9 Q I see. When you went up to the White House
10 counsel's office on the morning of the 21st, the
11 first time you were there that morning, was there a
12 Secret Service guard posted outside of Mr. Foster's
13 office?

14 A I don't believe so.

15 Q Did you look in Mr. Foster's office?

16 A I don't recall if I looked in his office or
17 not. I'm sure that I didn't go in his office.

18 Q You're certain you did not go in there; you
19 can't be certain whether or not you looked in there?

20 A Right. It's a room about the size of the
21 reception area, and the two doors would be like that
22 on the wall.

1 Q By "like that" you're indicating opposite
2 directions on the wall?

3 A Right. And the entryway would be here and
4 the door would be here and here, the inner offices.

5 Q The only reason I'm being tedious is that
6 doesn't mean anything to the record.

7 A I understand.

8 Q So as you walk in the reception area the
9 door to the reception area and Mr. Foster's office is
10 to your immediate right; is that correct?

11 A Right. I would say his door is about 8 to
12 10 feet away.

13 Q And Mr. Nussbaum's door is at a 90 degree
14 angle to Mr. Foster's door but very close by; isn't
15 that also right?

16 A Yes, sir.

17 Q And you're clear that you didn't go into
18 Mr. Foster's office that morning?

19 A I believe that's correct.

20 Q And your best recollection is that when you
21 were there the first time before the 11:00 meeting,
22 there was not a Secret Service guard posted outside

1 the door?

2 A I believe that's correct.

3 Q Who did you see in Mr. Foster -- strike
4 that -- in the White House counsel's suite that
5 morning?

6 A In the reception area, Mr. Nussbaum, and I
7 believe Ms. Pond. There were other people there that
8 I just don't remember. It's really difficult for me
9 to remember because a lot of events happened that
10 day, but -- the different times I was in and out.

11 Q Okay. Was the President there?

12 A I seem to remember saying, someone said the
13 President had come by -- I don't know if that was in
14 the morning or the afternoon, though -- to visit with
15 senior counsel staff.

16 Q Now, you did see Mr. Nussbaum and
17 Ms. Pond. What did you observe them doing, if
18 anything?

19 A Nothing in particular.

20 Q Did you have any conversations with anyone
21 on the morning of the 21st before the Secret Service
22 guard was posted that you recall?

1 A I'm sorry. Regarding what?
2 MR. BEN-VENISTE: You mean in the counsel's
3 office.
4 MR. JOHNSON: In the counsel's office,
5 thanks.
6 MR. TURK: About any subject?
7 BY MR. JOHNSON:
8 Q On any subject that you recall?
9 A Not anything in particular prior to the
10 meeting.
11 Q Okay. Do you recall discussing whether or
12 not Mr. -- anyone had been in Mr. Foster's office?
13 A I don't believe so.
14 Q Okay. And I take it you also didn't
15 discuss whether or not Mr. Foster's office should be
16 sealed or had been sealed or any -- anything related
17 to the topic of sealing Mr. Foster's office?
18 A It's difficult for me to remember. I know
19 that that conversation took place shortly -- around
20 that time. I'm not sure if it came up before the
21 meeting or at the meeting.
22 Q Okay. When you entered the west wing of

1 the White House that morning, sometime after 8:14 --
2 strike that, Lori, I'm sorry.
3 When you came into the gate, is that the
4 reader that says it was 8:14?
5 A Yes, sir.
6 Q That would be the southwest gate?
7 A Yes, sir.
8 Q Did you go directly to the west wing from
9 there?
10 A I don't recall.
11 Q Okay. Well, did you carry a briefcase to
12 work?
13 A I don't recall.
14 Q Do you normally carry a briefcase to work?
15 A No.
16 Q Do you have a briefcase?
17 A Yes.
18 Q Where do you leave it?
19 MR. BEN-VENISTE: Are you talking about now
20 or then?
21 MR. JOHNSON: Then.
22 MR. BEN-VENISTE: Did you have a

1 briefcase --

2 THE WITNESS: It's an important
3 distinction because I had a briefcase which I used
4 sparingly in the beginning of the administration, and
5 I have another briefcase that I use now.

6 BY MR. JOHNSON:

7 Q What about in July of 1993, did you have a
8 briefcase then?

9 A Yes, I did.

10 Q Okay. Where did you -- did you routinely
11 take it to and from work with you?

12 A No.

13 Q So your practice was to leave it in the
14 office somewhere; is that correct?

15 A No, I didn't have a practice. But I
16 suspect I left it at home more often than not.

17 Q Okay. And you don't recall whether or not
18 you carried that briefcase with you on the morning of
19 the 21st?

20 A No, I don't recall, but I don't believe I
21 did carry a briefcase that day.

22 Q Now, you pointed out to me that the

80

1 distinction that Mr. Ben-Veniste made is an important
2 one, having to do with there being a new briefcase or
3 something. Why is that an important distinction?

4 A Well, I had -- used to have an old brown
5 carry-around kind of briefcase, which I think I
6 carried in the White House, I don't know, a few
7 times. I have another briefcase which I use since
8 then, "since then" meaning the year I got rid of that
9 briefcase, when I moved in October of '94. I moved
10 and threw a bunch of stuff away.

11 Q What's your new briefcase look like?

12 A It's a silver briefcase.

13 Q Metal?

14 A Aluminum, I think.

15 Q But in July 1993 you describe a brown
16 leather briefcase, is that correct, that you were
17 using?

18 A I think through October of '94.

19 Q What makes you think you didn't bring it to
20 the White House that morning?

21 A Because I don't carry it that often. I
22 usually carry it for travel.

1 Q I think I was asking you after you arrived
2 at the southwest gate whether or not you went
3 directly to the west wing, and I think you said you
4 didn't recall. Have I got that right?

5 A Yes, sir.

6 Q Sometime that morning did you go over to
7 the west wing?

8 A Yes, sir.

9 Q How did you enter the west wing? Whether
10 you went directly there or whether from your office,
11 from what entrance did you go into the west wing?

12 A I don't recall specifically which entrance
13 I used.

14 Q Was it your practice to use the basement
15 entrance?

16 A Yes, sir.

17 Q So if you had to guess today, would you
18 guess that you used the basement entrance, or you
19 just don't know?

20 A If I had to guess I would say yes, but I
21 just don't know.

22 Q And you testified that you were in the

1 White House counsel's office one or perhaps more
2 times, the reception area of the White House
3 counsel's office one or perhaps more times before the
4 11:00 a.m. meeting; is that correct?

5 A Yes, sir.

6 Q Do you recall anything at all about those
7 visits to the White House counsel's reception area
8 that we have not discussed?

9 A No, sir.

10 Q Did you take any documents out of the White
11 House counsel's reception area that morning?

12 A Definitely not.

13 Q Okay. Did you take any documents out of
14 Mr. Nussbaum's office?

15 A I don't believe that I -- in the normal
16 course of my job, I -- I'm the person that stores
17 personnel files, and the only kind of document
18 retrieval or storage that I would be doing would be
19 regarding those types of documents. And I don't
20 believe that morning anybody was working on personnel
21 stuff; therefore, I don't believe that I moved any
22 kind of personnel files, and I have no specific

1 recollection of moving anything else, either.

2 Q Now, when you say "personnel files," does
3 that include the vetting files of presidential
4 nominees?

5 A I do White House staff.

6 Q What about the vetting files of White House
7 staff, if there is such a thing? I'm trying to see
8 if a personnel file is something different than an
9 ordinary file regarding White House personnel?

10 A Typically they're a green file this size.

11 Q Indicating my file folder on the desk in
12 front of me; right?

13 A Yes, sir.

14 Q Ordinary-sized files?

15 A Yes, sir. And typically I would -- or
16 someone from my office, more likely, would be called
17 and asked to retrieve or deliver a particular file of
18 a staffer that they wanted to review information on.

19 Q Okay. Now, Mr. Livingstone, none of this
20 is a secret; you know why I'm asking these
21 questions. I was just trying to figure out what, if
22 anything, would account for observations that a White

1 House Secret Service officer has made, including the
2 possibility that he is completely erroneous. I just
3 want to see what happened that morning.

4 And I asked you whether you went into
5 Mr. Foster's office, and you said no. And I asked
6 you whether you removed any documents from the
7 reception area, and you said definitely not. And I
8 asked you if you removed any documents from
9 Mr. Nussbaum's office, and I got a different, less
10 certain answer. So let me just ask you directly --

11 MR. TURK: I would like to object to that
12 characterization of Mr. Livingstone's testimony. I
13 think what he said was that the only kind of document
14 that he would ever take over to Mr. Nussbaum's office
15 or bring back were the types of personnel files for
16 which his job responsibilities ensured that he had
17 custody. And that he is quite certain that he did
18 not move any of those documents that day because no
19 one was working on personnel files.

20 MR. JOHNSON: Well, --

21 MR. TURK: He didn't say definitely, I
22 agree with you, in the sentence there, but I don't

1 believe there was hesitation on his part.

2 MR. JOHNSON: I didn't mean to imply
3 hesitation. Let me just go through it. We're not
4 hearing it differently.

5 BY MR. JOHNSON:

6 Q You're certain you did not take anything --

7 MR. BEN-VENISTE: Three times we've gone
8 through the Foster and reception. Could we just now
9 ask directly in Nussbaum's office because I recognize
10 I've contributed to the lateness of the hour, but
11 let's try to wrap this up.

12 BY MR. JOHNSON:

13 Q I'll be real brief, but I do want to be
14 clear. In response to Mr. Turk's -- I want to see if
15 there's a different degree of certainty with respect
16 to whether or not you took documents out of
17 Mr. Nussbaum's office than there is with respect to
18 whether or not you took documents from the reception
19 area. You're certain you didn't take documents from
20 the reception area, I take it?

21 A Yeah. I think -- I think the confusion is
22 in the error -- the choice of words that "I took." I

1 don't recall moving anything outside of my normal job
2 duties is the way I was trying to define it, from
3 either the reception area or Mr. Nussbaum's office.
4 I don't believe that I did. I don't recall being
5 asked to bring or take any personnel files. I don't
6 have a greater degree of certainty for one or the
7 other. I feel confident that I didn't remove
8 anything that I didn't know about, which would be
9 personnel files, is what I meant to say.

10 Q Okay. Let me ask you directly. What is
11 your degree of certainty about whether or not you
12 moved personnel files on that morning?

13 A I don't recall removing any personnel
14 files.

15 Q So your best recollection is that you did
16 not remove any?

17 A Yes, sir.

18 Q Do you remember being asked or otherwise
19 personally or -- strike that.

20 You also mentioned that you visited some
21 others in the White House that morning. I think you
22 described -- I think you said the chief of staff, but

1 my memory may be failing me on that. Do I remember
2 right?

3 A I don't know that I mentioned the chief of
4 staff. But I didn't go to see the chief of staff. I
5 remember being in the hallway. I may have seen the
6 people in his office or himself at some point. I
7 didn't have any meetings with people.

8 Q Okay. On any time on the morning of the
9 21st, were you accompanied by any person as you moved
10 around the west wing?

11 A Well, there was a lot of hustle and bustle
12 that day; people were coming and going quite a bit,
13 as I remember. I don't remember at all being with
14 anyone, walking around specifically with one person,
15 though.

16 Q And no one who works with you accompanied
17 you on that walk, to the best of your knowledge?

18 A No one from my office, and I don't believe
19 anybody that I report to.

20 Q Okay. I will try and state this as
21 accurately as I can, and I'll rely on various counsel
22 to point out anything that I say wrong. We have

1 information, Mr. Livingstone, that you may have been
2 observed by uniformed Secret Service officer early in
3 the morning on the 21st carrying a briefcase and
4 perhaps accompanied by someone carrying a box or
5 boxes, the contents of which were difficult to
6 identify.

7 Do you have any explanation for that
8 observation? Do you have any recollection about that
9 morning that would explain that observation?

10 A First of all, I don't believe I had a
11 briefcase that day. I'm going to try to answer your
12 question precisely.

13 Q Sure.

14 A Second of all --

15 MR. TURK: I would --

16 THE WITNESS: Second of all, I can't
17 account for what someone observed. I can't answer
18 that specifically. I don't have any recollection,
19 however, of being with anyone. Is it possible that I
20 was walking in the hallway and there was a person
21 with a box? Sure. That I wouldn't remember it? I
22 would think so, because it was a pretty harried

1 morning, and I was very tired and upset.

2 Have I thought about it a million times?

3 Sure. But I can't -- I have no specific recollection
4 of that event happening.

5 BY MR. JOHNSON:

6 Q Okay. Let me ask you a couple more
7 specific questions about it just to close the loop on
8 that general recollection. Did you remove -- were
9 you in -- strike that, Lori; I'm sorry.

10 Were you in the First Lady's suite of
11 offices at any time on the morning of the 21st?

12 A I don't believe so.

13 Q And I take it therefore you don't recall
14 removing any documents or things at all from the
15 First Lady's suite of offices?

16 A I don't remember removing anything from the
17 First Lady's office. I don't know that I've ever
18 been in the First Lady's office. I may have been in
19 the reception area once or twice, but I would have no
20 business with the First Lady.

21 Q Okay. To the best of your recollection,
22 you weren't there on the morning of the 21st, that

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1 is, the First Lady's reception area?

2 A To the best of my recollection, I wasn't
3 there. But it is adjacent to the counsel's office.
4 I may have been standing in the hallway or nearby,
5 but I don't recall being in it.

6 Q What about Maggie Williams's office, which
7 I understand is adjacent to the First Lady's suite.
8 Were you in Ms. Williams's office at any time on the
9 morning of the 21st?

10 A I don't believe that I have ever met with
11 Ms. Williams in her office.

12 Q Whether or not you met with Ms. Williams,
13 were you in the office?

14 A In her office, no.

15 Q It follows, therefore, that you didn't
16 remove any documents from that office on the morning
17 of the 21st?

18 A Yes, sir. I don't believe that I have ever
19 had anything to do with that office, with documents.

20 Q Okay. Were you in David Watkins's office
21 on the morning of the 21st?

22 A Yes, sir.

1 Q Tell me what you recall about that.

2 A I had a couple friends that worked in his
3 reception area, staffers. Staffers that worked in
4 his area. And we visited, hello, you know.

5 Q Did you see Mr. Watkins in there that
6 morning?

7 A I don't recall if I -- at what time, but we
8 did meet in his office at least once, if not twice
9 prior to the 11:00 meeting.

10 Q What was the purpose of that -- that or
11 those meetings with Mr. Watkins?

12 A I believe it was to discuss the 11:00
13 meeting, and somebody had directed me to -- and I
14 don't recall who -- but make sure the officers got
15 into the White House and into the meeting.

16 Q Do you remember anything else about it
17 other than that?

18 A We probably talked about the memorandum or
19 chronology at some point.

20 Q That being the typewritten chronology that
21 we've referred to throughout your testimony here?

22 A I believe that's correct.

1 Q And did you remove any documents or things
2 or cause anyone to remove any documents or things
3 from Mr. Watkins office?

4 A I don't believe so.

5 Q Do you recall being in anyone else's office
6 on the morning of the 21st prior to the 11:00 meeting
7 that we're referring to?

8 A I'm confident that I was, but I don't
9 recall where only because it wasn't about anything
10 substantive. It's just how are you doing, how are
11 you feeling.

12 Q And you don't remember carrying a briefcase
13 anywhere within the west wing of the White House on
14 the morning of the 21st, I take it?

15 A No, sir.

16 Q Whether or not it was your briefcase? My
17 question should include anybody's briefcase.

18 A I don't recall carrying anybody's
19 briefcase.

20 Q And to your knowledge -- strike that.

21 You didn't remove or cause to be removed
22 any box or boxes from the west wing of the White

1 House on the morning of the 21st from any location,
2 to the best of your recollection?

3 A That's correct, sir.

4 Q And you don't recall, as you sit here
5 today, being accompanied by or walking next to anyone
6 who was carrying a box or boxes of documents?

7 A No.

8 Q You just -- as you said before, you've
9 tried to explain this a million times, and it just
10 doesn't mean anything to you?

11 A Correct.

12 Q Do you have any reason to think that
13 somebody would want to falsely accuse you or make
14 observations about you that aren't true?

15 A Initially I was concerned because I didn't
16 know who the individual was, and I have had some, as
17 I stated earlier in my testimony, some instances
18 where I have had to talk with supervisors in the
19 uniformed division of the Secret Service about
20 behavior. It was never anything like we did an
21 official memo and wanted someone sanctioned; it was
22 always a person grabbed somebody's purse and threw it

1 through the X-ray machine because they were having a
2 bad day, I don't know, but it wasn't appropriate kind
3 of behavior. I thought -- maybe just trying to think
4 why someone would say that, and I don't know of any
5 specific reason.

6 Q As you sit here today, do you know the name
7 of the uniform officer who thinks that he observed
8 you that morning?

9 A I think I know who it is.

10 Q Who do you think it was?

11 A Officer Abbott.

12 Q Do you have any reason to believe that
13 officer Abbott would have a personal grudge or any
14 reason to falsely state his observations or make
15 accusations that aren't true with respect to you?

16 A I don't know of any reason. I can't speak
17 to why he would say that.

18 Q Officer Abbott was not one of the officers
19 who you had these sort of discussions with about the
20 appropriateness of their conduct?

21 A I don't think so.

22 Q Let me return back to your chronology. It

1 says at 11:00 a.m. on July 21st "I met with" and
2 there's a list of names that appear below that. Do
3 you see that?

4 A Yes, sir.

5 Q What do you recall about that meeting?

6 A I believe it was in Mr. Watkins's office.

7 Q Feel free to refer to this if you like;

8 otherwise I'll look at it.

9 A I believe that was in Mr. Watkins's office,
10 and again the only reason I think I was there was
11 because I identified the body. I really didn't have
12 an official capacity to be there, and --

13 Q Who spoke in that meeting?

14 A Mr. Nussbaum and Mr. Stephanopoulos.

15 Q And you've indicated on your chronology
16 statements or at least subjects attributable to
17 Mr. Nussbaum and Mr. Stephanopoulos, and I'll read
18 one. It says "Nussbaum said that the Attorney
19 General's office would be contacted to oversee
20 investigation."

21 Do you remember Mr. Nussbaum saying words
22 to that effect on July 21st?

1 A Do I remember it now, no. But if I wrote
2 it there, I feel pretty confident that's the way it
3 happened.

4 Q Do you remember anything else about it at
5 all?

6 A It was a very short meeting, as I recall.

7 Q Okay.

8 A And I don't recall anything substantive on
9 that.

10 Q Do you have any recollection about
11 Mr. Nussbaum explaining why the Attorney General's
12 office would be contacted to oversee the
13 investigation?

14 A No, sir. Not that I can recall.

15 Q Okay. The next statement says
16 "Stephanopoulos -- restated to the U.S. Park Police
17 to 'follow whatever the normal course of
18 investigation is and the White House would assist as
19 required.'" Now you've placed quotations around that
20 in your memo. Why is that?

21 A I just felt pretty confident that was word
22 for word.

1 Q At least at the time you wrote this, you
2 were trying to capture Mr. Stephanopoulos's exact
3 words; is that right?

4 A I don't know if I was trying to capture it;
5 I think I probably did. That's my practice when I
6 have a memo similar to that: If it's word for word,
7 I put it in quotes.

8 Q This says "Stephanopoulos restated." Do
9 you mean to imply he said that more than one time in
10 that meeting?

11 A I believe he either said it or someone else
12 in the meeting said it, and he was reaffirming it,
13 the importance of it.

14 Q Other than the two statements that we've
15 just described, one by Mr. Nussbaum and one by
16 Mr. Stephanopoulos, do you remember anything else
17 about the meeting on the morning of the 21st?

18 A I remember around that time period talking
19 with Mr. Nussbaum and a couple other people that were
20 there, and that's why I'm not sure if it was the
21 meeting or Mr. Nussbaum's reception area, about
22 the -- that the Secret Service could post somebody.

98

1 Q Do you remember anything more about that
2 conversation than that?

3 A No. People just sort of noted it, and that
4 was it.

5 Q In the 11:00 meeting did Mr. Nussbaum -- do
6 you remember whether or not Mr. Nussbaum stated that
7 he had been in Mr. Foster's office on the evening of
8 the 20th?

9 A I don't remember any conversation like
10 that, no.

11 Q You don't remember him saying one way or
12 the other whether he or anyone else had been in
13 there?

14 A Correct.

15 Q Was there any discussion at all that you
16 recall about Mr. Foster's office, its contents, and
17 whether or not anyone had been in there at the 11:00
18 meeting on July 21st?

19 A No. I don't recall anything about the
20 investigation other than the parameters of the
21 investigation. I don't remember anybody talking
22 specifically. I don't think any interviewing was

1 done at the time by any of the Park Police people.

2 Q What's the next thing that you recall on
3 the 21st relating to Mr. Foster's death?

4 A I remember after that meeting -- I don't
5 know, shortly, in my mind, shortly thereafter about
6 getting started on this memo, knowing that it was
7 important. I don't know specifically the moment I
8 did it, but I remember it being pretty early in the
9 day following the meeting.

10 Q Why did -- I should have asked this
11 earlier -- why was it your sense this memo was
12 important?

13 A I think, as I stated before, mostly for the
14 idea that -- that if there were press inquiries, to
15 have an accurate accounting of the events. I don't
16 recall if I stated to you, but one of the things my
17 father said in that phone call when I called him
18 before I went and identified Mr. Foster's body was to
19 make sure you write down a chronology.

20 Q You did say that.

21 A To some effect that you're going to be
22 questioned, and you need to know your involvement.

100

1 It was important.

2 Q Okay. All right. Other than working on
3 this chronology which we've been describing after the
4 11:00 meeting on the 21st, do you remember anything
5 else happening that day?

6 A To tell you the truth, I have a very hard
7 time remembering that day. I remember leaving, you
8 know, late afternoon. I was very tired. I'm
9 insulin-dependent diabetic -- and I'm not supposed to
10 volunteer things, but I'm an insulin-dependent
11 diabetic, and without sleep and proper care it's
12 difficult for me to focus on some things. I think I
13 was pretty upset by that point in the day.

14 Q Are you feeling okay now?

15 A Yeah. Thank you.

16 Q All right. So I take it -- lots of things,
17 I take it, happened that day, but I don't mean out of
18 the ordinary things. You just don't have any
19 recollection beyond what we've talked about with
20 respect to the 21st?

21 MR. TURK: About anything else that
22 happened that day? That's kind of broad. Maybe

1 you --

2 MR. JOHNSON: Thank you. I mean in
3 connection with Mr. Foster or his death or the
4 investigation.

5 MR. TURK: Even that's pretty broad. Is
6 there anything in particular you --

7 MR. JOHNSON: In particular, anything else
8 he remembers. I'm just trying to sweep up the day so
9 we can finish it. It's not a memory test.

10 BY MR. JOHNSON:

11 Q I'm just trying to see if there's something
12 that pops in your mind that I haven't asked you
13 about.

14 A I do remember things, but I feel more
15 comfortable ask -- answering questions because I'm
16 not sure how they relate to what you want.

17 Q We'll go through this as quickly as we can,
18 but it's important if you remember other events on
19 that day relating to Mr. Foster in any way that you
20 tell me about them and we can sort of move quickly
21 through them. What else do you remember?

22 A I remember meeting with the Park Police,

1 getting them into the meeting.

2 Q Into what meeting?

3 A Into the meeting at 11:00 a.m.

4 Q And the Park Police were Mr. Langston and
5 Mr. Hines?

6 MR. TURK: 11:00 a.m. do you mean?

7 BY MR. JOHNSON:

8 Q Was that the Park Police you identified on
9 your memo, Mr. Langston and Mr. Hines?

10 A There were other people that day, but I
11 don't remember specifically who I talked to.

12 Q Okay. Do you remember anything about your
13 conversations with them?

14 A I remember specifically being in a hallway
15 and having an officer ask me if I had been in
16 Mr. Foster's office or if I knew anybody had been in
17 his office, and I answered no to both questions.

18 Q That was Officer Markland, as I recall.
19 Does that name mean anything to you?

20 A I know the name through the paper, but I
21 don't recall if he was the officer because I don't
22 know the officer's name. It was very brief. It

1 wasn't an interview.

2 Q He just asked you a couple questions?

3 A Yeah, waiting for the elevator, that type
4 of thing.

5 Q Did you ask him why he was asking you those
6 questions?

7 A He started out was I there that morning,
8 had I been in counsel's office, and had I been in
9 Mr. Foster's office, and I said no. It was very
10 quick, like a three-minute conversation.

11 Q But he didn't introduce that conversation
12 by saying, you know, "I have information that
13 suggests" or anything like that?

14 A Absolutely not.

15 Q Did he seem to know who you were when he
16 approached you?

17 A I don't recall how we met exactly.
18 Normally I would meet people in the west wing and
19 introduce myself because they would sort of stand
20 out, visitors stand out. But I don't recall the
21 exact nature of the meeting with the Park Police
22 officer.

1 Q Did he take notes when he asked you those
2 questions?

3 A As I recall it, the best of my ability, we
4 were both standing up, and we were either waiting for
5 an elevator or walking down a hall or something like
6 that because it was very brief. And I didn't -- I
7 didn't take note of it because it seemed so casual to
8 me.

9 MR. TURK: Does that mean you do or don't
10 recall whether he took any notes?

11 THE WITNESS: To answer the question, I'm
12 sorry, I don't recall. I don't believe he did.

13 BY MR. JOHNSON:

14 Q Okay. What else do you remember about the
15 21st, if anything?

16 A I remember talking to the press office at
17 some point about the need for my chronology so that
18 someone could brief the press. I can't remember
19 exactly if it was that day or the next day, to tell
20 you the truth. I know it was in the afternoon of one
21 of those two days.

22 Q Who is Mike Jones?

1 A Mike Jones is a friend of mine that works
2 at the Department of Agriculture.

3 Q Did you call Mr. Jones in the early morning
4 hours of the 21st of July?

5 A I can't recall when I called him. I know I
6 called him to see if he could be of help. Either
7 that night at the Foster house, maybe driving me, or
8 perhaps the next morning with the press, just sitting
9 out with me, looking out to see if there was going to
10 be press the next morning. We had done events in the
11 campaign.

12 Q You wanted him to accompany you either the
13 evening of the 20th or early morning of the 21st; is
14 that right?

15 A The best of my recollection, it was one of
16 those two issues. It might have been both,
17 actually. I may have called him twice.

18 Q And did he accompany you either of those
19 two times?

20 A No. I didn't reach him.

21 Q You called him because he was a buddy and
22 you thought he might be able to help you?

1 A Yeah. And he lived near me; he lived a few
2 blocks away.

3 Q What's his job at the Agriculture
4 Department?

5 A I think he works in public affairs. I
6 don't know the specific job. We don't stay in touch
7 that much.

8 Q Okay. We talked about the Park Police
9 officer who asked you a couple of questions.
10 Anything else that you recall about the 21st relating
11 to Mr. Foster's death?

12 A No. I didn't have any specific
13 responsibilities.

14 Q What about on the 22nd, which would now be
15 Thursday the 22nd? Did you have any involvement
16 personally at all in the events relating to
17 Mr. Foster's death on the 22nd?

18 A I don't recall.

19 Q Okay.

20 A I don't recall the next day at all.

21 Q Let me just represent to you in order to
22 refresh your memory that Park Police officers and

1 others were present on that day in Mr. Foster's
2 office to review with Mr. Nussbaum the contents of
3 that office. Did you have any involvement at all in
4 that activity?

5 A I don't believe so. I don't think I was
6 there.

7 Q Did you travel to Little Rock for
8 Mr. Foster's funeral?

9 A No.

10 Q What -- let me just try and be very broad
11 now. If I missed something, I trust you to help me
12 out here. After the events that we've described on
13 the 21st, what involvement, if any, did you have over
14 the next 10 days with respect to the investigation
15 into Mr. Foster's death or the contents of
16 Mr. Foster's office?

17 A The only thing specific that I can remember
18 is offering to pick up his car from the impound lot.

19 Q Who did you offer that to?

20 A Probably Mr. Kennedy. I don't recall. It
21 may have been Mr. Watkins, but most likely
22 Mr. Kennedy.

1 Q And did you pick up his car?

2 A I did. The problem is I don't remember
3 when I did it. So I don't know if that answers your
4 question.

5 Q And did you bring his car back to the White
6 House?

7 A I did.

8 Q Where did you park it?

9 A I parked it on west executive, and it was
10 then moved to the new executive office building.

11 Q Other than retrieving Mr. Foster's car, any
12 other involvement by you in the investigation or
13 other events surrounding Mr. Foster's death?

14 THE WITNESS: Can I ask you a question and
15 see if it portends to the question?

16 MR. TURK: Sure.

17 THE WITNESS: Excuse me.

18 (Discussion off the record.)

19 MR. JOHNSON: I think we had a question
20 pending.

21 (The reporter read the record as requested.)

22 THE WITNESS: The only thing I can

1 remember is offering to help with the access of the
2 Park Police for the investigation, and I think I did
3 that to Mr. Nussbaum and Mr. Watkins, one or the
4 other.

5 BY MR. JOHNSON:

6 Q Tell me what you remember about it.

7 A Just saying that we could leave their names
8 at the southwest gate if they were scheduled for
9 appointments with the White House, just to help them
10 with accesses to get in, make it less tedious for
11 them.

12 Q Do you remember when that was?

13 A I think within the time frame that you
14 offered, a few days afterwards.

15 Q Do you remember anything more specifically
16 about your conversations with Mr. Nussbaum or
17 Mr. Watkins other than I can help or something like
18 that?

19 A No. I mean, I don't remember saying I can
20 help. I remember specifically offering to help the
21 police officers get -- help them with the access,
22 just get the paperwork done. The chronology, the

1 car, and I believe, you know, shortly after the first
2 day I had nothing else to do with the day-to-day part
3 of the investigation.

4 Q Now, a note, a handwritten note by
5 Mr. Foster was discovered sometime in the vicinity of
6 Monday, July 26th, 1993. Did you have any
7 involvement in the handling of the note?

8 A No, sir.

9 Q Have you ever seen it as you sit here
10 today?

11 A Have I seen it? No, sir. I seem to
12 remember reading it, about it in the paper, and
13 that's about it.

14 Q Did you have any conversations with anyone
15 or overhear any conversations between anyone on the
16 topic of whether or not anyone entered Mr. Foster's
17 office on the evening of the 20th or early morning
18 hours of the 21st of July 1993?

19 A Not specifically, no. I seem to remember
20 reading in the paper about it much later, but --

21 Q Other than press accounts, you don't know
22 anything about that?

1 A No. I wasn't the principal in any
2 conversation, and I don't believe I ever heard any
3 conversation about that.

4 Q Did you ever speak with the First Lady on
5 any topic at all?

6 MR. TURK: On any topic?

7 MR. JOHNSON: Just has he ever spoken with
8 her?

9 MR. BEN-VENISTE: Kip, I really think it's
10 so far afield.

11 MR. JOHNSON: If the answer is no, it won't
12 take very long.

13 THE WITNESS: I don't believe that I have
14 ever had a substantive conversation.

15 BY MR. JOHNSON:

16 Q I take it you have never spoken with her
17 about Mr. Foster's death or the events related to
18 Mr. Foster's death?

19 A Correct. I can say I have never spoken to
20 her about Mr. Foster's death or the events
21 surrounding Mr. Foster's death.

22 Q Now, there came a time -- let me ask you

1 this question and show you a document dated May 27th,
2 1994, bearing document production number Z000460, and
3 it says "memorandum for the record from Terry Good,
4 re, report of Good, Livingstone."

5 (Exhibit Z460 identified.)

6 BY MR. JOHNSON:

7 Q Have you ever seen that before?

8 A I'm not sure if I've seen this document or
9 not.

10 Q It's possible, but you don't recall?

11 A That's correct.

12 Q It says "Mr. Livingstone gave me a copy of
13 his handwritten notes and a copy of a more formalized
14 version of these notes outlining his recollection of
15 these events." What I want to ask about is "he dated
16 and signed the handwritten notes 7/23" and the next
17 part says "there was no signature or date on the
18 typed version." The document we've been looking at
19 is 000494 through 000496. While it does not have a
20 signature, it does have a date. And I'm wondering if
21 there is another typed version of these events?

22 A Not to my knowledge.

1 Q So as far as you know, this is the only
2 typewritten version that you know?

3 A Yes, sir.

4 MR. BEN-VENISTE: I can cover this during
5 my examination, but I don't understand the point
6 about the date. It seems to me that maybe I have
7 misunderstood your question, that you're suggesting
8 that one version of the typed version had a date and
9 the other did not.

10 MR. JOHNSON: Richard, I was reading from
11 460, which refers to the typewritten notes, and it
12 says there was no signature nor date on the typed
13 version.

14 MR. TURK: I think if you talk to Terry
15 Good you'll find his memo is in error and he
16 recognizes that.

17 MR. JOHNSON: That's all I'm trying to
18 ascertain, whether there was another typed version.

19 MR. TURK: No. There is not another typed
20 version.

21 MR. BEN-VENISTE: So the record is clear,
22 because these documents won't be attached to the

1 transcript, both Z494 and Z461 have, under the
2 heading "report from Craig Livingstone," the date
3 July 21, 1993.

4 MR. JOHNSON: Say that again?

5 MR. BEN-VENISTE: Z494 and Z461 appear to
6 be identical, and in that regard both have, under the
7 heading "report from Craig Livingstone," the date
8 July 21, 1993.

9 MR. COLE: The confusion may stem from the
10 fact you are only holding Z460; the next document,
11 Z461, is another copy of Livingstone's report.

12 MR. JOHNSON: Which we have been referring
13 to as 000494.

14 MR. COLE: That's another identical copy.

15 MR. JOHNSON: I seem to cause wholly
16 unintended confusion here. Mr. or Ms. Good's memo
17 indicates that the typed version of the chronology
18 was not signed or dated. The typed version of the
19 chronology, which is the only one that I'm aware of,
20 that we have been working off here today, is dated.
21 And I wanted to know whether Mr. Good was in error or
22 whether there is an undated, typed chronology.

1 Mr. Livingstone has said that to the best
2 of his knowledge, the only typed chronology is the
3 one that we've been referring to here today. Have I
4 said that right?

5 MR. TURK: Well, does Mr. Good's memo have
6 attached to it the typewritten memo?

7 MR. JOHNSON: I think that's what Mr. Cole
8 indicated.

9 MR. TURK: You don't have it attached to
10 the document you're showing to Mr. Livingstone.

11 MR. JOHNSON: I don't.

12 MR. TURK: But the document attached to
13 Mr. Good's memo is a copy of Mr. Livingstone's memo,
14 and it is dated, is it not?

15 MR. JOHNSON: It is. That's my point.

16 MR. BEN-VENISTE: Possibly the confusion is
17 while the handwritten notes, which are Exhibit Z463,
18 are signed and dated in the bottom right hand corner,
19 there is no signature on the typed version and no
20 date at the conclusion of the report. However, it is
21 possible that the author of the cover memo did not
22 notice that it was dated at the top of it.

1 MR. JOHNSON: I think all those things are
2 possible.

3 BY MR. JOHNSON:

4 Q What's important to me is that, to the best
5 of your recollection, there's no chronology other
6 than the ones we've looked at today; is that right?

7 A I like to be precise. The chronology that
8 I prepared is that chronology that's dated July 21st,
9 1993, and the handwritten chronologies that I
10 remember doing.

11 Q And there was nothing else, to the best of
12 your knowledge?

13 A I don't recall seeing any other
14 chronologies before today.

15 Q Okay. At some point in time you became
16 aware of press accounts that describe your movements
17 or the Secret Service officer's observations of your
18 movements in the west wing of the White House on the
19 morning of the 21st; is that right?

20 A Yes.

21 Q Did you try and find out at that time who
22 the Secret Service officer was?

1 A I believe I did.
2 Q How did you try and find out?
3 A I think I called, made a friendly call and
4 asked if we knew who was making the allegation and if
5 there is a reason why this person --
6 Q And who did you call?
7 A I don't recall.
8 Q Could it have been Inspector Martin?
9 A It's possible, yes.
10 Q Do you recall anyone other than perhaps
11 Inspector Martin who you called?
12 A I don't know -- I can't think of anybody
13 else, but there's possibly someone else.
14 Q No names come to mind?
15 A No. I don't recall anybody.
16 Q Okay. Why did you want to know at that
17 time the name of the Secret Service officer?
18 A I thought it would be important for me to
19 know if, in fact, it was somebody I might have had a
20 run-in with.
21 Q And did you learn the name?
22 A No. They didn't reveal it.

1 Q When did you subsequently learn the name?
2 MR. TURK: I think that --
3 THE WITNESS: I don't know.
4 MR. TURK: I think that answer may invade
5 the attorney-client privilege.
6 MR. JOHNSON: Thank you.
7 BY MR. JOHNSON:
8 Q Exclude from your answer anything you may
9 have learned from your attorneys, and also exclude
10 anything that you may have heard in connection with
11 conversations you may or may not have had with
12 representatives from the independent counsel's
13 office. Other than that, did you learn from any
14 other source?
15 A No.
16 MR. JOHNSON: Would you just give me a
17 second? I may be finished.
18 (Pause.)
19 BY MR. JOHNSON:
20 Q Mr. Livingstone, thank you very much. I
21 don't have any further questions for you at this
22 time. Thank you very much for your cooperation.

1 Mr. Ben-Veniste may have some questions, and when
2 he's finished I will say a word about
3 confidentiality. Thank you for your time.

4 A Yes, sir.

5 EXAMINATION

6 BY MR. BEN-VENISTE:

7 Q Mr. Livingstone, my name is Richard
8 Ben-Veniste, and I'm special counsel to the
9 minority. Let me see first whether you can clear up
10 some confusion, at least in my mind, in terms of your
11 position with the White House, and, more
12 specifically, your position with the White House in
13 July of 1993.

14 A Yes, sir.

15 Q Am I correct that, despite the fact that
16 your title was director of White House security, that
17 you had no function in terms of providing physical
18 security to anyone at the White House?

19 A That's correct, sir.

20 Q And was this a title which was, for want of
21 a better explanation, inherited from the last
22 administration? Was there someone in the Bush

120

1 administration who had the title of director of White
2 House security?

3 A To be precise, the office itself has been
4 called White House security. The person that had it,
5 the Bush appointee prior to me that had it was called
6 the assistant to the counsel of the President for
7 security. There was some wrangling over money when I
8 first came into the job --

9 Q I don't need to know about the details of
10 the wrangling about money. All I would like to know
11 is whether at some point this office, in some prior
12 iteration in a different administration, had
13 something to do with physical security?

14 A No, sir.

15 Q So the title "director of White House
16 security" was one which was new, as far as you knew,
17 to the Clinton administration?

18 A Yes, sir.

19 Q It had not existed in the prior Bush
20 administration?

21 A No, sir.

22 Q But nevertheless, the person who held the

1 equivalent job to yours had nothing to do with the
2 physical security of the White House or the people
3 who worked there, as far as you knew?

4 A Yes, sir.

5 Q Now, it seems to me that it was possible
6 that, because of your title, it may have been
7 presumed by individuals representing law enforcement
8 agencies that you did, in fact, have something to do
9 with the physical security of individuals at the
10 White House. Did you come to learn that there may
11 have been some confusion about your exact job
12 function?

13 A Yes, sir. We would get mail from time to
14 time.

15 Q And is that basically why it was thought
16 best to change the name of your job to White House
17 personnel security?

18 A Yes, sir.

19 Q And as White House personnel security
20 director, if I understand your testimony correctly,
21 you had something to do with getting the proper forms
22 and applications filled out by individuals who were

1 offered appointments to work on the White House
2 staff?

3 A That's correct.

4 Q And basically you would help in processing
5 that paperwork?

6 A Yes, sir.

7 Q You wouldn't go out and conduct any
8 investigations on your own, would you?

9 A Not investigations, but we did conduct
10 interviews, security interviews in my office.

11 Q When you say security interviews, you might
12 ask the applicant questions?

13 A Yes, sir, from a form.

14 Q Did you go out and arrange for interviews
15 of other people who might have information relevant
16 to the applicant?

17 A No, sir.

18 Q So it was really confined to trying to get
19 people to fill out their forms in a complete and
20 accurate way?

21 A Yes, sir.

22 Q And when you talk about adjudicating these

1 applications, you're not suggesting that it was you
2 who would make a determination whether, on the basis
3 of information generated by the FBI or other
4 investigative agencies, who would determine whether
5 an applicant was fit for this appointment?

6 A Right. Counsel would review the background
7 investigations and send them on to me if they had
8 issues that they wanted to discuss.

9 Q So you were there to follow up, to make
10 sure any ambiguities would be -- ambiguities would be
11 resolved and the completeness in the paperwork would
12 be complete?

13 A Yes, sir.

14 Q Now, when you received the call on the
15 evening of the 20th and you determined that you would
16 agree to go and identify Mr. Foster's body, that was
17 not because you had any function to do with
18 protecting Mr. Foster or investigating any other
19 employee of the White House; is that correct?

20 A That's correct.

21 Q And it was not because you had -- were
22 known to have any particular special relationship

124

1 with Mr. Foster whereby it would be clear that you
2 would be an appropriate person to identify his body;
3 is that correct?

4 A I believe so.

5 Q So you just happened to get this -- get
6 this call that evening, and as a result of having
7 gotten the call, you then notified someone who you
8 knew to be an appropriate person to identify
9 Mr. Foster's body, that being Mr. Kennedy?

10 A Yes, sir.

11 Q Now, let me ask you whether you had -- you
12 had ever identified a body before at the morgue.

13 A I don't believe so.

14 Q Had you ever seen anyone who was gravely
15 injured by a gunshot wound to the head prior to that
16 evening?

17 A No.

18 Q And did this have an effect on you, your
19 viewing of Mr. Foster's body, beyond the effect
20 that -- beyond the effect that the news of his death
21 had already had on you?

22 A I think that I was upset.

1 Q Were you crying?

2 A No.

3 Q Were you crying the next morning?

4 A I think I was.

5 Q And you've mentioned that you are insulin
6 dependent, and forgive me if I'm not up to date on
7 the current medical treatment and technology, but in
8 the course of running around that evening in a way
9 inconsistent with your normal evening's activities, I
10 think it's fair to say -- was your schedule somewhat
11 upset?

12 A Yes, sir. I got very little sleep that
13 night.

14 Q And you've indicated that you're
15 particularly prone to or sensitive to deprivation of
16 sleep; is that correct?

17 A It's a combination of things; sleep is one
18 of the criteria.

19 Q But you felt that you would be performing a
20 useful function in a time of anguish and some
21 confusion, and so you posted yourself outside of the
22 Foster family residence on the evening and early

1 morning hours of the 20th; is that correct?

2 A Yes, sir.

3 Q Now, you were not suggesting, are you, that
4 you spent any significant portion of that evening
5 inside the Foster residence; is that correct?

6 A No, sir.

7 MR. JOHNSON: That was very confusing.

8 BY MR. BEN-VENISTE:

9 Q I asked you whether it was correct, and I
10 think you answered no. So to clarify your answer,
11 did you spend any significant portion of the evening
12 inside the Foster residence?

13 A To be precise, I believe that I looked in
14 the door, saw one of the family members kind of
15 anguishing, and immediately excused myself and did
16 not return to the inside of the house.

17 Q So you don't even know whether you stepped
18 inside the home that evening?

19 A That's correct.

20 Q In terms of what you indicated you
21 overheard, I take it, then, that this was either
22 while you were sitting in your car or standing

1 outside in the vicinity of the home that evening?

2 A Yes, sir.

3 Q And when you indicate that you saw Patsy
4 Thomasson that evening at the Foster home, I take it
5 you did not see her while you were inside the home
6 since you've indicated you were not inside?

7 A That's correct, sir.

8 (Discussion off the record.)

9 (Recess.)

10 BY MR. BEN-VENISTE:

11 Q So the conversation which you had testified
12 you overheard on the evening of the 20th about the
13 fact that no suicide note had been found was snatches
14 of conversation between persons other than yourself;
15 is that correct?

16 A Yes, sir.

17 Q You were not a party to the conversation
18 and don't know the context of the conversation?

19 A Correct, sir.

20 MR. COHEN: Can I correct one thing? He
21 testified he did not know the conversation was the
22 night of the 20th.

1 THE WITNESS: What I said earlier was I
2 wasn't sure if it was late that evening or the next
3 morning.

4 BY MR. BEN-VENISTE:

5 Q At some point you had heard a
6 conversation -- overheard a conversation --

7 A Yes, sir.

8 Q -- to the effect that no suicide note had
9 been found, but you don't know whether it was
10 something you overheard the night of the 20th or
11 something you overheard the next day?

12 A Yes, sir.

13 Q In terms of your schedule on the 21st, in
14 your typewritten -- or in the typewritten memorandum
15 marked Z494, you indicate you think you left the
16 Foster residence at about 8:00 a.m. on July 21st.

17 A Yes, sir.

18 Q And you also indicated in that memorandum
19 that you arrived at the house at 6:30 in the morning,
20 staying for about an hour and a half.

21 A I think that's about right.

22 Q Now, as your comings and goings became

1 important in the context of an investigation
2 conducted by the FBI and various independent
3 counsels, you attempted with more precision to find
4 out, if you could, whether there was a record of the
5 time of your arrival; is that correct?

6 A Yes, sir.

7 Q And in that regard made inquiries whether
8 there was a record of an electronic card reader or
9 pass reader that would reflect at what time you
10 arrived at the -- at the White House on the morning
11 of the 21st; is that correct?

12 A Yes, sir.

13 Q And you were advised that that time was
14 8:14; is that correct?

15 A Or thereabouts; right. A minute or two.

16 Q And that would coincide, would it not, with
17 your recollection, as reported in the memorandum
18 dated July 21st, 1993, that you left the Foster
19 residence at about 8:00?

20 A Yes, sir.

21 Q To the best of your knowledge, was the
22 information provided to you with respect to the

1 electronic printout of your use of the -- of your
2 White House pass on the morning of the 21st
3 corroborated by the FBI or any other investigative
4 agency?

5 MR. JOHNSON: I'm not sure I understand
6 what you're asking him, about his arrival time?

7 MR. BEN-VENISTE: Yes.

8 BY MR. BEN-VENISTE:

9 Q If you don't know, you can say you don't
10 know.

11 A I don't know for a fact. I seem to
12 remember being questioned about it.

13 Q All right. And was there an attempt to
14 determine, to the best of your knowledge, whether the
15 memorandum dated July 21st, 1993 and marked as Z494
16 was, in fact, generated on some computer in the White
17 House on or about July 21st, 1993?

18 A What I understand happened is the FBI sent
19 their computer whizzes over -- computer experts,
20 excuse me, to try and locate the document on the
21 computer.

22 Q Locate it on the hard drive of the

1 computer?

2 A I believe that's correct.

3 Q Do you have your own computer, or did you
4 have your own computer in July of 1993?

5 A Yes.

6 Q And was that the computer on which this
7 document was located?

8 A I don't know. I don't believe so.

9 Q So is it your recollection that you
10 provided information to someone on or about the 21st
11 and that that information found its way into this
12 memorandum dated July 21, 1993?

13 A Yes, sir.

14 Q And that the FBI experts analyzed the
15 computer, to the best of your present information, to
16 determine whether, in fact, this document was
17 generated on or about July 21st, 1993?

18 A Yes, sir.

19 Q And what was the result, as far as what you
20 were informed?

21 A I believe they located the document.

22 Q And by that, you mean to say that they

1 corroborated the fact that it was generated on or
2 about the date indicated on the document?

3 A That's what I believe.

4 Q To the best of your recollection, the
5 question that was asked you by a Park Police officer
6 who you now know to be Detective Markland -- strike
7 that.

8 Do you know the name of the Park Police
9 officer who questioned you at the elevator on the
10 21st of July, 1993?

11 A No, sir.

12 Q But, to the best of your recollection, that
13 individual asked you whether you had been in
14 Mr. Foster's office earlier that morning?

15 A Yes, sir.

16 Q And you responded that you had not?

17 A No. Yes, I responded that I had not.

18 Q And do you remember -- do you remember how
19 long this conversation between you and the police
20 officer lasted?

21 A As I remember, sir, it was a very brief
22 conversation, two people standing in a hallway.

1 Q Do you remember whether you gave this
2 individual a business card of yours?

3 A It's possible. I don't recall, though.

4 MR. BEN-VENISTE: Just a minute.

5 (Pause.)

6 BY MR. BEN-VENISTE:

7 Q Were you an individual particularly
8 designated to pass along complaints or comments or
9 evaluations of uniformed Secret Service officers at
10 the White House?

11 A Could you be a little more specific? I'm
12 sorry.

13 Q Was it part of your job to pass along to
14 Secret Service supervisors comments, whether they be
15 positive or negative, about uniformed Secret Service
16 officers?

17 A I don't recall someone saying do it. I
18 know that people were aware that I did it.

19 Q So it just sort of evolved that you would
20 be a person to pass comments along to Secret Service
21 supervisors?

22 A The way I remember it, sir, is that it was

1 an informal mechanism, and that all parties involved
2 enjoyed it and that staff would get -- I would talk
3 to them based on the idea of suitability for
4 employment at the White House, how to conduct
5 yourself at the White House, how you act.

6 Q So you sort of got into that dynamic of
7 having interaction with the Secret Service
8 supervisors because some of the interns under your
9 supervision ran afoul of proper etiquette at times
10 and that was pointed out to you by the Secret
11 Service?

12 A Right.

13 Q And once having established some working
14 relationship with the supervisors, from time to time
15 you passed along comments about the Secret Service
16 uniformed officers working under the supervision of
17 the same individuals?

18 A Yes, sir.

19 Q And from time to time in the course of that
20 relationship with the supervisors, you passed along
21 either information that you had personally witnessed
22 or that was passed along to you regarding the

1 appropriateness of conduct from a civility standpoint
2 of the uniformed Secret Service officers; is that
3 correct?

4 A Yes, sir. It would only be issues of
5 civility.

6 Q And do you know whether anyone was
7 counseled from the uniformed officer's division of
8 Secret Service on the basis of one or more of the
9 comments that you had made to supervisors?

10 A I was told that happened.

11 Q And on how many occasions?

12 A Several, I believe.

13 Q Over what period of time is that in
14 relationship to July of 1993?

15 A I suspect several times between January and
16 February of '93 and July of '93.

17 Q Do you remember any -- do you recall any
18 particular incident where what you had passed along
19 was contested by the uniformed officer in question?
20 Did this get into a sort of adversarial or
21 disputed --

22 A I don't have a recollection of that.

1 Q -- disputed kind of confrontation?

2 A I don't have a recollection of that.

3 Q And how would you have learned that the
4 individuals who were the subject of your critical
5 comments were counseled?

6 A Inspector Martin or someone else would get
7 back to me and just say they talked to the individual
8 involved. Again, this is supposed to be as low-key
9 as possible. It was more of a -- not an official
10 thing. It wasn't an official function.

11 Q Okay. So since this was not an official
12 part of your job, it may have been viewed with less
13 than enthusiasm by the uniformed Secret Service
14 personnel involved?

15 A It's possible.

16 (Discussion off the record.)

17 BY MR. BEN-VENISTE:

18 Q Do you remember how you were dressed on the
19 morning of the 21st? You've gotten a few hours of
20 sleep, if you slept at all. Do you remember if you
21 slept at all?

22 A I believe I slept for a little while, yes.

1 Q You got home at sometime after 3:00 and you
2 were back in front of the Foster residence at 6:30.
3 Do you feel you might have gotten a couple hours of
4 sleep?

5 A I think that's correct.

6 Q And what do you recall about what you were
7 wearing on the 21st?

8 A I don't recall today what I was wearing.

9 Q How did you normally dress for work?
10 Business attire?

11 A Business attire, yes, sir.

12 Q Tie and jacket?

13 A Normally I would have a -- like I'm dressed
14 now, without my jacket.

15 Q It's July now. It was July then. Would
16 you have worn a jacket to the White House in July?

17 A Certainly if I was going to be around the
18 President, I would have my jacket on, in a function
19 or something. But in my office --

20 Q In the absence of knowing that there was
21 some particular scheduled function, do you know
22 whether or not you would have worn a jacket?

1 A I'm trying to be as precise as I can. I
2 can't recall what I was wearing that day.

3 MR. BEN-VENISTE: I have nothing further.
4 Thank you.

5 MR. JOHNSON: I just have a very, very
6 brief follow-up.

7 EXAMINATION

8 BY MR. JOHNSON:

9 Q Exhibit 494 and 496, which is the
10 typewritten version of your chronology, I just got a
11 little confused. Did you write it?

12 A The typewritten?

13 Q Yes, sir.

14 A Yes. I wrote it out longhand.

15 Q You wrote it out longhand and then gave it
16 to someone to be typed?

17 A That's correct.

18 Q Who did you give it to to be typed?

19 A I don't recall.

20 Q Did you have a secretary?

21 A I have an assistant. She does most of my
22 word processing, but not all of it.

1 Q Do you have a recollection today about one
2 way or another whether she typed this?

3 A I seem to remember asking her, and she
4 didn't recall typing it.

5 Q So who else might have typed it?

6 A I don't know. I may have given it to her,
7 though. I don't -- I don't recall who I gave it to,
8 is what I'm saying.

9 Q You told Mr. Ben-Veniste that you didn't
10 think this was found on your computer. Am I right
11 about that?

12 A Yes.

13 Q Whose computer do you think it was found
14 on?

15 A I don't know.

16 Q What makes you think it wasn't yours?

17 A Because I don't do hardly any word
18 processing myself.

19 Q You wouldn't have typed it yourself?

20 A I just do E-mail.

21 Q What happened to the notes that you wrote
22 this up from?

1 A I must have thrown them away but I don't
2 know.

3 MR. JOHNSON: Thank you very much for your
4 time. It's very important to all of us to maintain
5 the confidentiality of these proceedings, so we would
6 be grateful if you wouldn't discuss your deposition
7 here today with anyone. Thank you, sir.

8 THE WITNESS: Thank you.


9 (Whereupon, at 3:25 p.m., the deposition
10 was concluded.)
11

12 -----
13 CRAIG LIVINGSTONE
14
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

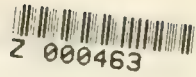
141

I, LORI J. SEGNERI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires OCTOBER 31, 1996



- 5 - 6 pm Appx. Time of Death
(According to Commander Robert H. Hines, VSPark Police,
- 6 Citizen (unknown) calls Fairfax Fire/Rescue
- 6:04 Fairfax Fire/Rescue calls VSPark Police
(because it is Park land)
- 6:15 Park Police arrive at scene
- 7:40 Medical Examiner arrives on scene
- 8:00 (9ppx) Body Moved to Fairfax Hospital
- 8:30 USSS notified by Park Police
- 8:45 USSS notifies David Watkins
Watkins notifies ?
- 9:00 USSS notifies Craig Livingstone
- 9:05 Livingstone notifies COS
- 9:10 Livingstone notifies D. Kennedy
proceeds to Fairfax Hospital
- 9:30 Livingstone/Kennedy meet AT
Fairfax Hospital notify WH of arrival
- 9:45 Livingstone/Kennedy identify body
- 9:55 Livingstone/Kennedy notify COS
of positive ID

Craig R. Myers
7/23/23

REPORT FROM CRAIG LIVINGSTONE

July 21, 1993

I arrived home from the White House approximately 9:00 p.m. on Tuesday, July 20, 1993.

As I was walking through my door my phone was ringing. When I answered it a male identified himself as U.S. Secret Service and asked me to stand by for Inspector Dennis Martin.

Inspector Martin identified himself to me. The Inspector informed me that the Park Police had called to inform them that apparently Vincent Foster had committed suicide on GW Parkway at around 6:00 p.m. that evening.

I had just left the Larry King set with POTUS and was concerned that POTUS might learn about this on live TV. I called White House Operator to page Mark Gearan. Gearan told me that they were advised of the issue. I told Gearan that I was going to Fairfax Hospital to identify the body. Gearan instructed me to do so.

I then called Bill Kennedy who said he would meet me at Fairfax Hospital. I did this because Kennedy is a close friend of the Foster Family and I thought it would help them if he said he saw the body.

I left my home and proceeded to Fairfax Hospital. I met Bill Kennedy at approximately 9:30 p.m. at the ER of Fairfax Hospital.

Kennedy and I met with a Fairfax Police Officer at the Hospital. I spoke to the White House to let them know Kennedy and I were at the scene.

While the Fairfax Police Officer attempted to secure permission for us to view the body. I called the Hospital switchboard to see if anyone was making any unusual inquiries about patients. They responded no.

During this time period (9:30 - 9:45 p.m.) phone calls were received/exchanged between Kennedy -- Bernard Nussbaum -- Webster Hubbell from my location. These calls were informational and attempted to determine if the Foster family had been notified, what their location was, etc.

At approximately 9:45 p.m. we were escorted to a viewing room by a Senior Nurse. We stopped at a glass partitioner with a curtain behind it which was opened. At this time Kennedy and I confirmed to the Nurse that the body was Vincent Foster. We returned to a consultation room where upon I called Thomas (Mack) McClarty -- I handed the phone to Kennedy who informed McClarty that Vincent Foster was dead. (Approximately 9:55 p.m.)


Z 000494

I suggested to Mark Gearan that before I leave I give the hospital a contact name for inquiries. He said to give Dee Dee Meyers number. I did this and drove Kennedy to Vincent Foster's home.


We were at the Foster home until approximately 2:00 a.m. At around 1:30 a.m. several vehicles responded to the address. They "sprayed" the block and left at about 1:45 a.m.

On Wednesday, July 21, 1993, I drove by the house at 6:30 a.m. and stayed until 8:00 a.m. There was no press activity.

At 11:00 a.m. on July 21, 1993, I met with:

Bernard Nussbaum
George Stephanopoulos
Webster Hubbell
David Watkins
Bill Kennedy
Robert Langston, Chief, U.S. Park Police
Robert Hines, Commander, U.S. Park Police
Don Flynn, USSS
Arnie Cole, USSS

At this briefing informal discussion took place as to the nature of the investigation. Nussbaum said that the Attorney General's Office would be contacted to oversee investigation. Stephanopoulos restated to the U.S. Park Police to "follow whatever the normal course of investigation is and the White House would assist as required."


Z 000496

CHRONOLOGY

July 20

- Park Service Police contacts White House security and administrative officers to report that they had found a body they believed to be Vince Foster. They found his car and matched White House ID and license.
- 8:30 pm USSS notifies Watkins. He calls the Park Service detectives.
- 8:50 pm Watkins calls Bill Burton to alert Mack.
- 9:00 pm Inspector Dennis Martin [USSS] calls Craig Livingstone. Martin tells Livingstone that the Park Police had called him to inform him that Vincent Foster had apparently committed suicide on the GW Parkway at around 6:00 pm that evening.
- 9:15 pm Bill Burton alerts Mack McLarty of call received from David Watkins about unconfirmed report of Vince Foster suicide.
- Livingstone contacts Gearan to inform him. Gearan tells Livingstone that he had already been advised. Livingstone told Gearan he was going to Fairfax Hospital to identify the body. Gearan instructed Livingstone to do so.
- Livingstone then called Kennedy, who agreed to meet Livingstone at the hospital.
- 9:30 pm Livingstone and Kennedy meet at the Emergency Room of Fairfax Hospital.
- Kennedy and Livingstone meet with Fairfax County Police at the hospital. Livingstone checks in with the White House. Kennedy checks in with Nussbaum, Hubbell to determine if family had been notified.
- 9:45 pm Livingstone and Kennedy view body and confirm that the person was Foster.


Z 000497

9:45 pm Watkins and Park Police detectives arrive at Foster home.

9:55 pm Livingstone places a call to Mack; Kennedy informs Mack that Foster is dead.

 Livingstone and Kennedy depart for Foster home.

9:55 pm ---

--- Park Police and David Watkins visit Foster home to inform Mrs. Foster.

10:00 pm Larry King Live concludes and Mack McLarty returns to residence with POTUS to inform him of Foster's death.

---- POTUS visits Foster family in Georgetown


Z 000498

C. F.

065740

IL

May 27, 1994

MEMORANDUM FOR THE RECORD

FROM: TERRY GOOD

RE: REPORT OF CRAIG LIVINGSTON

Today, Mr. Livingston gave to me a copy of his handwritten notes and a copy of a more formalized typed version of these notes outlining his recollection of events from the evening of July 20 into the early morning hours of July 21, 1993, relating to the death of Vincent Foster.

He dated and signed the handwritten notes 7/23/93. There is no signature nor date on the typed version.



Z 000460

**DEPOSITION OF STEPHEN R. NEUWIRTH
IN RE: S. RES. 120**

MONDAY, JULY 10, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of STEPHEN R. NEUWIRTH, called for examination pursuant to notice of deposition, at 9:35 a.m. in Room 538 of the Dirksen Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.
Majority Chief Counsel
ALICE S. FISHER, Esq.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

FRANCIS P. BARRON, Esq.
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475
On behalf of the Deponent.

ALSO PRESENT: VINCENZO A. DELEO

CONTENTS

| WITNESS | EXAMINATION |
|----------------------|-------------|
| Stephen R. Neuwirth | |
| by Mr. Giuffra | 3 |
| by Mr. Kravitz | 234 |
| by Mr. Giuffra | 267 |

EXHIBITS

| | |
|--------------------------|------------|
| Stephen R. Neuwirth | |
| DEPOSITION NUMBER | IDENTIFIED |
| Neuwirth Exhibit 1 | 126, 3344 |

PROCEEDINGS

(9:35 a.m.)

Whereupon,

STEPHEN R. NEUWIRTH

was called as a witness herein, and having been first
duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GIUFFRA:

Q Good morning, Mr. Neuwirth, my name is
Robert Guiffra. I'm Chief Counsel of the Senate
Banking Committee.

To my left is Alice Fisher. She is a
counsel to the Majority Staff.

And further down is Neal Kravitz, who is
the Principal Deputy Democratic Special Counsel.

Behind is Vincenzo DeLeo, who works for
the Majority Staff.

Would you please state your name for the
record?

A Stephen Neuwirth.

Q The spelling of your last name?

A N-E-U-W-I-R-T-H.

4

Q You understand this is a deposition that's
being conducted pursuant to Senate Resolution 120.
Senate Resolution 120 establishes a Special Committee
administered by the Banking Committee to conduct an
investigation involving Whitewater Development
Corporation and related matters.

A Yes.

Q Section 1.B.1 of Senate Resolution 120
authorizes an investigation and public hearings into,
quote, "whether improper conduct occurred regarding
the way in which White House officials handled
documents in the office of White House Deputy
Counsel, Vincent Foster, following his death" close
quote.

Mr. Neuwirth, you understand that will be
the focus of today's deposition, that one provision
in Senate Resolution 120?

A Yes.

Q When did you learn you'd be asked to
testify before the Senate?

A I don't remember the date. I was advised
by the White House Counsel's office that a request

1 had been made to take my deposition.

2 Q This is a deposition that's being
3 conducted in advance of public hearings that are now
4 scheduled to begin on July 18th. I think it's likely
5 you'll be asked to testify, and we will advise you in
6 advance of the particular date, so you can plan your
7 schedule.

8 The plan today is that I will be asking a
9 series of questions, and Mr. Kravitz will be asking a
10 series of questions.

11 You'll be testifying under oath.

12 If at any point today you don't understand
13 a question, please let me know. I'll rephrase the
14 question.

15 No attempt is being made to mislead you or
16 trick you, so if you find a question confusing,
17 again, let me know, and I'll rephrase the question.

18 If at any time today you need a break,
19 again, let us know and we'll take a break.

20 The stenographer will prepare a record of
21 the questions and answers and the deposition will be
22 treated as Committee confidential until the

1 commencement of the public hearings, meaning that it
2 will not be made public or disclosed to the press,
3 although after the hearings, it's likely to be part
4 of a formal record of proceedings that the Committee
5 will publish in a bound volume.

6 Under Senate Resolution 120, witnesses
7 have the right to be represented by counsel.

8 I see you're represented by Mr. Barron.

9 And if he would state an appearance for
10 the record.

11 MR. BARRON: Yes. My name is Frank
12 Barron. I'm representing Mr. Neuwirth.

13 MR. GIUFFRA: I don't know, Mr. Barron,
14 whether you've had a chance to look at Senate
15 Resolution 120.

16 The Resolution specifies certain rules
17 with regard to the conduct of depositions.

18 Objections by witness --

19 MR. BARRON: You know, I don't think you
20 need to go over that. I actually read it this
21 morning, so I'm familiar with it.

22 MR. GIUFFRA: Okay.

1 BY MR. GIUFFRA:

2 Q You'll be given the opportunity to review
3 the transcript, correct any errors in transcription.
4 Deposition transcripts will be made available in a
5 secure room at the Senate on July 14th, which is four
6 days prior to the start of the hearings.

7 We will make a copy of your deposition
8 available to your counsel four days prior to the day
9 on which you will be testifying in public hearings,
10 and we would ask that you and your counsel keep the
11 copy of that deposition secure and confidential.

12 Any questions?

13 A No.

14 MR. GIUFFRA: Mr. Barron?

15 MR. BARRON: No thank you.

16 BY MR. GIUFFRA:

17

18

19

20 Q And your present business address?

21 A Business address? It's the Old Executive
22 Office Building, Room 130.

1 Q Did you speak to anyone, prior to this
2 deposition?

3 MR. BARRON: About the subject of the
4 deposition?

5 BY MR. GIUFFRA:

6 Q Just in general, other than your family or
7 counsel?

8 MR. BARRON: About the fact that the
9 deposition was going to take place?

10 BY MR. GIUFFRA:

11 Q About the substance of the deposition?

12 A Only my counsel.

13 Q Anyone else?

14 A No.

15 Q You did not speak to Mr. Nussbaum?

16 A No.

17 Q Or Mr. Sloan?

18 A No.

19 Q Do you normally take notes?

20 A About what?

21 Q Legal matters that you're dealing with as
22 an Associate White House Counsel?

1 A It depends on the context of the
2 situation.

3 Q Do you recall taking notes in connection
4 with the investigation into Mr. Foster's death?

5 A Which investigation?

6 Q The Park Police's investigation of Mr.
7 Foster's death?

8 A I recall taking notes during two
9 interviews that the Park Police conducted of
10 employees of the White House Counsel's Office,
11 following Mr. Foster's death.

12 Q Do you recall taking any other notes?
13 (Pause.)

14 A It's a little difficult for me to know
15 what period you're talking about.

16 Q Let's say the period from July 20 through
17 August 10, 1993.

18 A It's a little difficult for me to recall,
19 off the top of my head, if I ever took notes on
20 anything, but those are the two things that I recall.

21 Q Do you recall destroying or discarding any
22 notes relating to the handling of Mr. Foster's

10

1 documents?

2 A No.

3 Q Are you aware that the Committee has
4 requested the White House provide certain documents
5 relevant to the handling of the papers in Mr.
6 Foster's office?

7 A Yes, generally I'm familiar with that.

8 Q Have you searched for any documents that
9 you might have in your possession or control
10 responsive to this request?

11 A When?

12 Q Either in connection with the Senate's
13 request or in connection with an earlier request?

14 A I've responded to all the requests for
15 documents that have been presented to me.

16 Q So you've turned over all documents that
17 would be in your possession or control relevant to
18 the handling of Mr. Foster's papers?

19 A I've turned over every document I've been
20 requested to turn over.

21 Q What is your present position?

22 A Associate Counsel to the President.

1 Q What was your position on July 20, 1993?

2 A I was also Associate Counsel to the
3 President.

4 Q If you could just state, going backwards,
5 your employment history from law school to the
6 present.

7 A After I graduated from law school, I
8 clerked for a year for Peter Lieser, who's a Federal
9 District Court Judge in the Southern District of New
10 York.

11 From December of 1988 through January of
12 1993, I was employed by Wachtell, Lipton, Rosen &
13 Katz, a law firm in New York.

14 Since January 26, 1993, I've been
15 Associate Counsel for the President.

16 Q While you were at Wachtell, Lipton, what
17 was your area of specialization?

18 A I was a litigator.

19 Q Did you work with Mr. Nussbaum while you
20 were a litigator at Wachtell, Lipton?

21 A Yes.

22 Q How closely did you work with Mr. Nussbaum

1 while you were a litigator at Wachtell, Lipton?

2 A It depended on the matter we were working
3 on.

4 Q Did you work with Mr. Nussbaum on a number
5 of matters at Wachtell, Lipton?

6 A Yes.

7 Q Do you recall roughly what portion of your
8 time you spent working on matters on which Mr.
9 Nussbaum was the supervising partner?

10 A I don't know. It's difficult for me to
11 calculate an exact percentage.

12 Q How about a rough percentage?

13 A At this point, it's hard for me to go back
14 and reconstruct what it was, but Mr. Nussbaum was one
15 of the heads of the litigation department at the
16 firm.

17 Q Did Mr. Nussbaum hire you as an associate
18 counsel to the President?

19 A He was the White House counsel at the time
20 I was hired.

21 Q Was he the person responsible, though, for
22 the fact that you were hired as a White House

1 counsel, associate White House counsel?

2 A I think so.

3 Q Just very briefly, your educational
4 background college and law school.

5 A I graduated from Yale College in 1984, and
6 from Yale Law School in 1987.

7 Q As of July 20, 1993, what was the location
8 of your office?

9 A I was in an office that was entered into
10 through Room 130 of the Old Executive Office
11 Building.

12 Q What was your office telephone number as
13 of July 20, 1993?

14 A 456-7903.

15 Q Did you have any other telephone lines?

16 A Yes.

17 Q Any other telephone numbers?

18 A Yes.

19 Q What were some of the other telephone
20 numbers you could have been reached at while you
21 were, as an associate counsel on July 20, 1993?

22 A I had a line into my office with the

1 number 456-6246. There were also other general
2 numbers at the counsel's office that someone
3 conceivably could have used to try to reach me.

4 Q What would those numbers have been?

5 A 456-2632, 456-7900, 456-6229, and
6 456-7901.

7 Q Generally, what were your areas of
8 responsibility in June and July, 1993, as an
9 associate White House counsel?

10 A My role was something of a generalist. I
11 didn't have a specific area assigned to me. I just
12 worked on various matters of different types.

13 Q Do you recall any of the matters upon
14 which you were working in the period of June-July,
15 1993?

16 A Yes.

17 Q Could you state what they were for the
18 record?

19 MR. BARRON: We may get into a problem
20 area in that there may be some things, I don't know
21 this myself, but there may be some things that if Mr.
22 Neuwirth were to describe them, they might disclose

1 matters that are in some way privileged.

2 MR. GIUFFRA: Let's go off the record just
3 for a second.

4 (Discussion off the record.)

5 (Recess.)

6 (Readback.)

7 MR. BARRON: If I might just note for the
8 record, we've had the question read back to the
9 witness and he's now going to respond to it.

10 THE WITNESS: Two of the major items I was
11 working on during that period were litigation
12 relating to the North American Free Trade Agreement
13 in Federal Court, and litigation relating to the
14 Health Care Task Force that was also in Federal
15 Court.

16 There were other matters I was working on.
17 I don't recall what they all were at this point.

18 (Pause.)

19 BY MR. GIUFFRA:

20 Q What was the nature of your relationship
21 with Mr. Foster?

22 A Vince was the Deputy White House Counsel.

1 As one of the associate White House counsels, I
2 worked with him regularly. I had great regard for
3 him and enjoyed working with him.

4 Q From January 1993 until Mr. Foster's death
5 in July 1993, do you recall the matters upon which
6 you worked with Mr. Foster?

7 A I don't recall all of them.

8 Q Could you state the ones that you do
9 recall for the record.

10 A The principal matter I worked on with him
11 was the litigation relating to the Health Care Task
12 Force and other issues related to the Health Care
13 Task Force.

14 I also did some work with him again on
15 litigation relating to NAFTA.

16 I'm sure there were other issues we worked
17 on, but the health care matter was the one that was
18 the major one we worked on together.

19 Q Roughly what proportion of your time
20 between January 1993 and July 1993 did you spend
21 working on matters on which you were directly
22 supervised by Mr. Foster?

1 A There weren't really any matters that Mr.
2 Foster and Mr. Nussbaum didn't supervise in some way
3 in terms of times of when I was actually with Mr.
4 Foster working on something. It's hard for me to
5 come up with a percentage, but there was very regular
6 interaction.

7 Q Would you say daily?

8 A We had a staff meeting every day, and I
9 would normally see him there if he was present. So
10 to that extent, I had virtually daily interaction
11 with him.

12 Q What was your understanding as to Mr.
13 Foster's area's of responsibility during this period
14 of January through July 1993?

15 A He was the Deputy White House Counsel and
16 he worked with Mr. Nussbaum on running the White
17 House Counsel's Office and helping to supervise all
18 of the matters handled by the office.

19 Q Did Mr. Foster have any specific areas of
20 responsibility?

21 A My understanding of his responsibilities
22 were what I just described.

1 Q Did you have any understanding as to how
2 management of the office was delineated between Mr.
3 Nussbaum and Mr. Foster?

4 A Well, I think Mr. Nussbaum liked to say
5 that the White House Counsel's Office was like a
6 small law firm, and that he and Vince were like the
7 senior partners in the law firm.

8 Q But did you have any understanding as to
9 how responsibilities were delineated between Mr.
10 Nussbaum and Mr. Foster?

11 A The way I described them to you.

12 Q Do you have any other, more specific
13 recollection as to how they were delineated, the
14 responsibilities were delineated?

15 A No.

16 Q As of July 20, 1993, did you have any
17 knowledge of Mr. Foster's role with regard to the
18 President's financial disclosure?

19 A As of July 20th, I'm not sure what my
20 state of knowledge was. I have developed a sense of
21 what it was, but I'm not sure that on July 20, 1993,
22 I knew.

1 Q As of July 20, 1993, did you have any
2 knowledge as to whether Mr. Foster worked on personal
3 legal matters for the President and First Lady?

4 A Again, I don't know exactly what my state
5 of knowledge was as of July 20. But I have never had
6 a sense that there were personal matters, as opposed
7 to matters that had some official component that
8 required White House Counsel's Office involvement.

9 Q As of the time of Mr. Foster's death, were
10 you aware that Mr. Foster was involved in the
11 preparation of the President and First Lady's tax
12 returns?

13 A Yes.

14 But I should say, I'm not sure that he was
15 involved in the, quote, "preparation" as much as he
16 was involved in handling the fact that the
17 President's tax returns are publicly disclosed each
18 year, and therefore the White House has a role to
19 play in the dissemination of information about the
20 tax returns. And we're talking now about their
21 income tax returns for 1992, which would have been
22 filed during the Spring of 1993.

1 Q What was the basis for your understanding
2 that Mr. Foster had some involvement with regard to
3 the President and First Lady's income tax returns?

4 A I think that I may have either been told
5 that or been asked to do something very minor, sort
6 of ministerial step, like telling someone that Vince
7 could make a phone call related to that, but I had no
8 personal involvement in it.

9 I just somehow became aware that that was
10 something he had worked on.

11 Q Do you know whether any other associate
12 counsel to the President had an involvement in the
13 President and First Lady's tax returns during this
14 period?

15 A I don't know.

16 Q As of the time of Mr. Foster's death, were
17 you aware that he maintained files regarding the
18 President and First Lady's finances in his office?

19 A I don't know what I knew on July 20th, if
20 that's the question. I just don't remember what I
21 knew on July 20th, as opposed to subsequently.

22 Q Is it possible for you to make an estimate

1 as to what you knew with regard to Foster's role with
2 regard to the President and First Lady's finances
3 prior to his death and after his death?

4 A I don't know again exactly when I became
5 aware of this, but I did become aware, at a certain
6 point, that Mr. Foster had played a role with respect
7 to the President's financial disclosure form that was
8 filed I believe in May 1993.

9 And again, my understanding is that the
10 role that was played by the White House Counsel's
11 Office was one that related to the fact that the
12 Office of Government Ethics reviews the financial
13 disclosure forms. There are requirements that apply
14 that relate to the fact that Mr. Clinton is the
15 President and Counsel's Office reviews financial
16 disclosure forms, etcetera.

17 Q As of July 20, 1993, did you have any
18 understanding as to whether Mr. Foster was a point of
19 contact in the White House Counsel's Office for
20 persons having involvement with regard to the
21 President's financial matters?

22 A Again, I'm not sure whether I knew that,

1 anything about that on July 20th, and I'm not sure
2 whether he was thought of as a point of contact.

3 Q As of July 20, 1993, what was your
4 understanding of Mr. Nussbaum's role with regard to
5 the President and First Lady's financial filings?

6 A I don't think that I had a sense of what
7 role he played.

8 Q Would it be fair to say that if anyone in
9 the White House Counsel's Office had been involved
10 relating to the President and First Lady's finances,
11 it would have been Mr. Foster?

12 A Well, again, I don't think that I've ever
13 said that he was working on their finances. I said
14 that I think he was working on their financial
15 disclosure form.

16 And Beth Nolan was the associate counsel
17 who had responsibility for financial disclosure form
18 matters as a general matter. And as in all other
19 matters on major issues, all of the associate
20 counsels would consult with Mr. Foster and Mr.
21 Nussbaum or one of them.

22 And so she presumably would have been

1 someone who would have been a logical person, as
2 well, to work on matters relating to financial
3 disclosure forms.

4 Q Do you know whether Ms. Nolan reported to
5 Mr. Nussbaum or to Mr. Foster with regard to
6 financial disclosure matters?

7 A Mr. Nussbaum was the head of the office.
8 Mr. Foster was a Deputy, and my understanding is that
9 on all matters, people in the White House Counsel's
10 Office generally reported to both people.

11 Q As of July 20, 1993, did you ever discuss
12 Whitewater Development Corporation with Mr. Foster?

13 A No.

14 Q Did you ever discuss Whitewater
15 Development Corporation with Mr. Nussbaum?

16 A No.

17 Q Did you ever discuss Whitewater
18 Development Corporation with Ms. Williams, Maggie
19 Williams?

20 A No.

21 Q Did you ever discuss Whitewater
22 Development Corporation with anyone as of July 20,

1 1993?

2 A No, I did not.

3 I should say, no one at the White House,
4 during the period when I worked at the White House.

5 Q As of the time of Mr. Foster's death, did
6 you have any knowledge that he had anything to do
7 with Whitewater Development Corporation?

8 A No.

9 Q Did you have any knowledge that he had a
10 file with regard to Whitewater Development
11 Corporation in his office?

12 A No.

13 Q When was your first knowledge of
14 Whitewater Development Corporation?

15 A I am aware that during the 1992 campaign,
16 presidential campaign, there were newspaper stories
17 about, I don't know whether they were about
18 Whitewater per se, but I've come to understand that
19 there were stories during that period.

20 I really don't recall whether I paid
21 attention to those stories, but it certainly wasn't
22 something that I focused on in any way, and it wasn't

1 something that I thought about after reading it.

2 And I don't recall at what point during
3 1993 I thought about Whitewater in any way, except
4 that I recall in late 1993, there were some press
5 accounts related to Whitewater when it became an
6 issue.

7 Q Did there ever come a time in which you
8 performed any --

9 Strike that.

10 Did there ever come a time in 1993 when
11 you performed any work relating in any way to
12 Whitewater Development Corporation?

13 A I don't think so.

14 Q Now you were a frequent visitor to Mr.
15 Foster's office, am I correct?

16 A By visit, you mean that I went there in
17 connection with work? Yes.

18 Q Do you recall whether Mr. Foster
19 maintained a neat office?

20 A I think it was generally neat.

21 Q How would you describe the manner in which
22 he maintained his office, papers in his office?

1 A Generally neat.

2 Q Did he maintain a neat desk?

3 A His desk, like his office, was generally
4 neat.

5 Q Did Mr. Foster work at the coffee table in
6 his office?

7 A If, by coffee table, you mean the small
8 table that was near the couch in his office?

9 Q Correct.

10 A I think there were times when he sat at
11 the couch or at the chair next to the couch, either
12 to read things or to have discussions with other
13 people who were in his office, and to that extent, he
14 may have put papers down on the table there during
15 those discussions, or when he was reading something.

16 Q Do you recall whether he regularly
17 maintained work-related papers or files on the coffee
18 table in his office?

19 A I'm not sure, but my best recollection is
20 that unless he was sitting, either reading or meeting
21 with someone, there would not have been work-related
22 papers sitting on the coffee table.

1 Q Did he maintain magazines or newspapers on
2 the coffee table?

3 A I'm not sure, but I know I've seen
4 newspapers and magazines on that table.

5 Q Do you have any knowledge with regard to
6 how Mr. Foster maintained --

7 Strike that.

8 Do you have any knowledge with regard to
9 how Mr. Foster filed documents within his office?

10 MR. BARRON: Are you asking, at this
11 point, what Mr. Neuwirth's state of knowledge was as
12 of July 20th, or at some point thereafter?

13 MR. GIUFFRA: Good point.

14 BY MR. GIUFFRA:

15 Q As of July 20, 1993, did you have any
16 knowledge with regard to the file maintenance system
17 that Mr. Foster employed in his office?

18 A I don't know what system he used. I was
19 just aware that he had files in his office.

20 Q Did you have any understanding, as of
21 July 20, 1993, of the nature of the files contained
22 in Mr. Foster's office?

1 A No. The only thing I knew is that he had
2 papers relating to matters we were working on.

3 Q Do you know whether Mr. Foster maintained
4 an index of his office files?

5 A I don't know.

6 Q Could you just briefly describe how the
7 central files of the Counsel's Office were
8 maintained, to the extent there were central files?

9 A I'm really not aware of central files. I
10 know that there was a chronological file that was
11 maintained for Mr. Nussbaum. But other than that, I
12 think each attorney in the office maintained his or
13 her own files.

14 Q As of July 20, 1993, did you have any
15 understanding as to whether Mr. Foster had a safe in
16 his office?

17 A I don't have any recollection of any safe
18 in Mr. Foster's office.

19 Q Was there a safe maintained in Mr.
20 Nussbaum's office?

21 A Yes.

22 Q Do you know who was aware of the

1 combination to that safe?

2 A No.

3 Q Do you have any knowledge with regard to
4 the kinds of documents that were maintained in that
5 safe between January '93, and July 1993?

6 A The only reference I ever heard made to
7 the types of documents that were to be kept in the
8 safe was with respect to documents related to
9 Presidential disability, and all that I heard was
10 that documents of that type had been maintained in
11 prior administrations.

12 I don't know whether documents of that
13 type actually were in Mr. Nussbaum's safe during that
14 period.

15 Q Did you have any understanding as to
16 whether Mr. Foster maintained any documents in the
17 safe that was contained in Mr. Nussbaum's office?

18 A I don't.

19 Q Was it standard procedure for members of
20 the White House Counsel's Office to maintain a burn
21 bag in their offices?

22 A I don't know if every person in the office

1 does, but I had a burn bag, and I think all of the
2 attorneys in the office had burn bags.

3 Q So it would be your testimony that, to the
4 best of your understanding, Mr. Foster had a burn
5 bag?

6 A I can't recall seeing it right now, but I
7 assume that he did.

8 Q As of July 20, 1993, what was your
9 understanding of the extent of Mr. Nussbaum's contact
10 with the President?

11 MR. GIUFFRA: Let's go off the record.
12 (Discussion off the record.)

13 THE WITNESS: I was not personally aware
14 of each instance when Mr. Nussbaum had contact with
15 the President, so it's a little difficult for me to
16 characterize the regularity.

17 BY MR. GIUFFRA:

18 Q Do you have any understanding of it, based
19 on your own knowledge, that the President had
20 frequent contact with Mr. Nussbaum?

21 A Again, I know that there was contact on
22 numerous occasions but, again, since I don't know how

1 often it occurred, it's a little difficult for me to
2 put a label on whether it was -- the nature of the
3 frequency.

4 Q What was your understanding of the extent,
5 as of July 20, 1993, the extent of Mr. Nussbaum's
6 contacts with the First Lady?

7 A Again, I don't know each instance where
8 Mr. Nussbaum had contact with her, and so it's also a
9 little difficult for me to characterize the
10 frequency. I do know he had contact with her.

11 Q Did Mr. Nussbaum have more frequent --
12 Strike that.

13 Was it your understanding that Mr.
14 Nussbaum had more frequent contact with the President
15 or with the First Lady prior to July 20, 1993?

16 A I don't know.

17 Q What was your understanding of the extent
18 of Mr. Foster's contacts with the President?

19 A Again, I'm not aware of the frequency of
20 those contacts.

21 Q Did you have any understanding with regard
22 to the extent of Mr. Foster's contacts with the First

1 Lady?

2 A I also don't know personally the extent to
3 which he made those contacts.

4 (Pause.)

5 Q Between January 1993 and July 1993, do you
6 recall whether the First Lady visited the Counsel's
7 suite of offices in the West Wing?

8 A I know that she was in that suite, and I
9 only remember one or two instances, but I don't have
10 personal knowledge of how often she did or didn't
11 come in.

12 Q As of July 20, 1993, what was the
13 frequency of contacts, what was your understanding of
14 the frequency of contacts between the Counsel's
15 Office and Ms. Williams?

16 A I can only speak for what I know about.

17 She was Chief of Staff to the First Lady,
18 as well as an assistant to the President. And I was
19 aware of various communications with her relating to
20 the Health Care Task Force matter that I mentioned
21 earlier.

22 I don't know the extent to which other

1 people in the office had contact with her, and how
2 regular it was.

3 Q As of July 20, 1993, what were the extent
4 of your contacts with Ms. Williams?

5 A I met with her quite frequently because
6 the, as you probably recall, the Health Care
7 litigation received a lot of attention, and so there
8 were various aspects of that litigation and related
9 matters that required attention.

10 Ms. Williams was one of the people that
11 was one of the people who consulted us about some of
12 those issues.

13 Q Do you have any knowledge as to whether
14 Ms. Williams worked closely with Mr. Foster on
15 matters when he served as Deputy White House Counsel?

16 A Are you asking me today?

17 Q As of Mr. Foster's death.

18 A Again, I don't know. I didn't know on
19 July 20th, the extent to which Mr. Foster and Ms.
20 Williams worked on matters together.

21 Q As you sit here today, do you have any
22 knowledge of the extent to which Mr. Foster and Ms.

1 Williams worked together on matters?

2 A As I sit here today, I am aware of a
3 matter that I was not aware of on July 20th, that
4 they were working on.

5 Q What was the nature of that matter?

6 A It was a matter relating to renovations f
7 the White House in 1993.

8 Q Could you briefly describe on what aspect
9 of this matter Mr. Foster and Ms. Williams worked on
10 this matter?

11 A 1993 was a year when what had become
12 periodic renovations to the White House occurred, and
13 I had learned, subsequent to July 20, 1993, that Mr.
14 Foster gave legal advice when it was required on
15 matters relating to that renovation.

16 Q As you sit here today, are you aware of
17 any instances in which Mr. Foster worked with
18 Patricia Thomasson while he was Deputy White House
19 Counsel?

20 MR. BARRON: Let me just be clear.

21 This is as of July 20th?

22 MR. GIUFFRA: No, we'll go to the present.

1 MR. KRAVITZ: What did you ask about?

2 MR. GIUFFRA: Patsy Thomasson.

3 THE WITNESS: I really don't know what
4 particular matters they worked on together. I know
5 that they knew each other. I saw them talking
6 together, but that may have been because they knew
7 each other from Arkansas. I'm not sure what they
8 were discussing.

9 BY MR. GIUFFRA:

10 Q As of July 20, 1993, were you aware of any
11 instances in which Ms. Thomasson was a visitor to the
12 White House Counsel's suite in the West Wing?

13 A My best recollection is that I may have
14 seen her there talking to Vince during that period,
15 but my recollection's a little hazy on that. I just
16 don't know for certain.

17 Q As of July 20, 1993, would you describe
18 the relationship between the Counsel's Office and the
19 First Lady's Office as close?

20 A The First Lady's Office was one of the
21 offices that the Counsel's Office gave legal advice
22 to in the White House. And I think that my knowledge

36

1 is that that legal advice was given as it was needed,
2 which was the case for all other offices in the White
3 House.

4 Q Did you have any understanding --
5 Strike that.

6 As of July 20, 1993, are you aware of any
7 instances in which the Counsel's Office took
8 direction from the First Lady or someone in her
9 office?

10 A No.

11 Q Okay. Directing your attention to
12 July 20, 1993, when did you first learn of Mr.
13 Foster's death?

14 A Was July 20th the date of his death?

15 MR. GIUFFRA: Off the record.

16 (Discussion off the record.)

17 THE WITNESS: I learned of Mr. Foster's
18 death on the evening of the day that he died.

19 BY MR. GIUFFRA:

20 Q Who contacted you?

21 A Mr. Nussbaum.

22 Q Do you recall where Mr. Nussbaum was when

1 he contacted you with regard to Mr. Foster's death?

2 A I believe he called me from his office at
3 the White House.

4 Q Do you recall the time?

5 A I think it was 10:00 or so at night. It
6 may have been even later than that.

7 Q What did Mr. Nussbaum say to you during
8 the course of this conversation?

9 A I don't remember his exact words, but he
10 told me that Vince -- I think he told me that Vince
11 had killed himself.

12 Q Did Mr. Nussbaum ask you to take any
13 action?

14 A No.

15 Q Did you return to the White House on
16 July 20, 1993?

17 A No.

18 Q Did you make any other phone calls on
19 July 20, 1993, after you learned of Mr. Foster's
20 death?

21 A Yes.

22 Q Who did you call?

1 A I called my brother, who lives in
2 Washington. I may have called my father, but I'm not
3 certain.

4 Q Did you call anyone from the White House?

5 A No.

6 Q Do you have any knowledge as to whether
7 the Park Police asked anyone at the White House to
8 seal Mr. Foster's office on the night of his death?

9 A I don't know.

10 Q Do you have any knowledge as to whether
11 Mr. McLarty asked that Mr. Foster's office be sealed
12 on the night of his death?

13 A I don't know.

14 Q Do you have any knowledge as to whether
15 Mr. Gergen asked that Mr. Foster's office be sealed
16 on the night of his death?

17 A I don't know.

18 Q Do you have any knowledge as to whether
19 anyone at the White House discussed sealing Mr.
20 Foster's office on the night of his death?

21 A I have no knowledge of that.

22 MR. BARRON: This is limited to the

1 evening of his death, is that correct?

2 MR. GIUFFRA: No. I'd like to know --

3 THE WITNESS: Your question was about the
4 night of his death. My answers all related to the
5 night of his death, which I understood to be what
6 your questions were about.

7 BY MR. GIUFFRA:

8 Q As you sit here today, based on
9 information you learned after Mr. Foster's death, do
10 you have any knowledge as to whether the Park Police
11 asked anyone at the White House to seal Mr. Foster's
12 office on the night of his death?

13 A I don't.

14 MR. KRAVITZ: Do you say you don't?

15 THE WITNESS: I have no knowledge.

16 MR. KRAVITZ: I was just going to say that
17 we should exclude from his answer any information
18 that he might have learned through counsel or through
19 meetings with the White House Counsel's Office. But
20 in light of his answer, I think we can forget that.

21 BY MR. GIUFFRA:

22 Q As you sit here today, do you have any

40

1 knowledge as to whether Mr. McLarty asked anyone to
2 seal Mr. Foster's office on the night of his death?

3 A I do not.

4 Q As you sit here today, do you have any
5 knowledge as to whether anyone asked that Mr.
6 Foster's office be sealed on the night of his death?

7 A I do not.

8 Q As you sit here today, do you know whether
9 any steps were taken to seal Mr. Foster's office on
10 the night of his death?

11 A I do not.

12 Q As you sit here today, have you ever
13 discussed with Mr. Nussbaum whether he was asked to
14 seal Mr. Foster's office on the night of his death?

15 A No.

16 Q So it would be your testimony that you
17 have no knowledge related to anything having to do
18 with the sealing of Mr. Foster's office on the night
19 of his death?

20 A I don't think that's what I said. I
21 answered your questions.

22 It was my understanding, the next morning,

1 that the office had not been sealed the night of his
2 death.

3 MR. KRAVITZ: Stop.

4 So the record is maybe a little bit more
5 clear, a more accurate question would have been
6 whether he has any knowledge about any requests, on
7 July 20, 1993, to seal Mr. Foster's office.

8 MR. GIUFFRA: That's a fine question.

9 THE WITNESS: I don't have any knowledge
10 about whether any requests were made on July 20th,
11 1993.

12 BY MR. GIUFFRA:

13 Q Do you have any knowledge as to whether
14 there was any discussion with regard to sealing Mr.
15 Foster's office on July 20, 1993?

16 A I do not.

17 Q As you sit here today, do you have any
18 understanding as to whether Mr. Nussbaum entered Mr.
19 Foster's office the night of July 20, 1993?

20 A I have seen the text of a speech that Mr.
21 Nussbaum gave and I have heard on C-SPAN a
22 presentation Mr. Nussbaum made in which he made

1 reference to the fact that he had been in the office
2 the night of the death.

3 Q Has Mr. Nussbaum ever discussed with you
4 the fact that he was in Mr. Foster's office on the
5 night of his death?

6 A I don't think we ever had a discussion on
7 that topic, but because I've seen the text of that
8 speech and heard the presentation on C-SPAN, it's a
9 little difficult to distinguish what I may have
10 picked up in that conversation or in one of those two
11 contacts.

12 Q Do you have any knowledge as to whether
13 Maggie Williams entered Vincent Foster's office on
14 the night of his death?

15 A I don't have personal knowledge. I
16 obviously read press accounts to that effect.

17 Q Do you have any knowledge, other than from
18 press accounts, with regard to whether Maggie
19 Williams entered Vincent Foster's office on the night
20 of July 20, 1993?

21 A Again, I don't think that I've heard that
22 from any other source, but it's a little difficult

1 for me to distinguish what I may have overheard in
2 conversation and what I read in the newspaper report.

3 Q Do you have any knowledge, other than from
4 press accounts, as to whether Patty Thomasson entered
5 Vincent Foster's office on July 20, 1993?

6 A I do not.

7 Q Do you have any knowledge, as you sit here
8 today, other than from press accounts, as to whether
9 anyone entered Vincent Foster's office on the night
10 of his death?

11 MR. BARRON: Other than what he's referred
12 to earlier? You're asking for anything beyond what
13 he's already testified to?

14 MR. GIUFFRA: We've gone through various
15 people, Nussbaum, Williams, and Thomasson.

16 BY MR. GIUFFRA:

17 Q My question is, do you have any knowledge
18 as to whether anyone, other than from press accounts,
19 entered Foster's office on the night of his death.

20 MR. KRAVITZ: Would that include Nussbaum,
21 so the question is anyone other than the people he's
22 already testified about?

1 MR. GIUFFRA: Yes.

2 THE WITNESS: I have no knowledge of
3 anyone else having been in the office.

4 BY MR. GIUFFRA:

5 Q Do you have any knowledge, as you sit here
6 today, whether there was any discussion on the night
7 of Mr. Foster's death of the need to retrieve trash t
8 was contained in his office?

9 A I don't have personal knowledge of whether
10 there were any such discussions.

11 At some point, I became aware generally
12 that trash had been retrieved but I don't really have
13 any personal knowledge of the details of that.

14 Q As you sit here today, do you have any
15 knowledge as to whether any papers or documents were
16 removed from Mr. Foster's office on July 20, 1993?

17 A No.

18 Q Have you ever discussed with Mr. Nussbaum
19 whether any papers were removed from Mr. Foster's
20 office on July 20, 1993?

21 A I don't think I've ever had a discussion
22 with him about that. The speech that I heard him

1 give on C-SPAN, he said that, I believe he said in
2 that speech that there had not been documents taken
3 from the office that night.

4 Q But that's your only knowledge with regard
5 to that subject matter?

6 A I think that's right.

7 Q When did you arrive at the White House on
8 July 21st, 1993?

9 A I don't remember the exact time, but it
10 was early in the morning.

11 Q Would it have been before 8:00 a.m.?

12 A I think it was either before or just
13 around 8:00, but I don't think it was much later than
14 that.

15 Q Was Mr. Nussbaum in the office when you
16 arrived?

17 A He was not.

18 Q Who was in the office when you arrived?

19 A I don't know if anyone was actually there
20 when I arrived, but either when I arrived or shortly
21 after, Betsy Pond was in the Counsel's Office suite.

22 Q Did you have a discussion with Ms. Pond?

1 Strike that.

2 Did you go to the Counsel's Office suite
3 on the morning of July 21, 1993?

4 A Yes.

5 Q Ms. Pond was in the suite?

6 A Either when I arrived or shortly
7 thereafter.

8 Q Did you have a discussion with Ms. Pond?

9 A Yes.

10 Q Would you please describe, for the record,
11 the discussion you had with Ms. Pond?

12 A Either at the time I arrived or shortly
13 thereafter, I saw that Ms. Pond was in Mr. Foster's
14 office, and we had a discussion about that.

15 Q When you saw Ms. Pond in Mr. Foster's
16 office on the morning of July 21st, 1993, what was
17 Ms. Pond doing?

18 A I asked her what she was doing, and she
19 told me that she was straightening out the office.

20 Q Did Ms. Pond, when you came upon Ms. Pond,
21 was she taking any action with regard to papers in
22 Mr. Foster's office?

1 A I don't know if, at the moment, I saw her
2 she was doing anything with any documents or other
3 materials in the office, apart from the fact that I
4 saw that she was in the office.

5 Q Do you recall where she was standing or
6 sitting when you came upon her?

7 A My best recollection is that she was near
8 Mr. Foster's desk.

9 Q Do you recall whether there were any
10 papers on the coffee table in Mr. Foster's office
11 when you entered on the morning of July 21st, 1993?

12 A I'm just not sure.

13 Q Do you recall what the condition was of
14 the papers in Mr. Foster's office when you entered on
15 the morning of July 21st, 1993?

16 A There was nothing particularly about what
17 was in the office that was out of the ordinary. The
18 office did look neat to me.

19 Q Did Ms. Pond indicate to you why she had
20 entered Mr. Foster's office?

21 A As I said, I asked her, and she told me it
22 was to straighten out the office.

1 Q Did she indicate to you that the office
2 needed to be straightened on the morning of
3 July 21st, 1993?

4 A She told me that she was there to
5 straighten it out.

6 Q Did she indicate whether she was acting at
7 the direction of anyone?

8 A I don't think she did.

9 Q Do you have any understanding as to the
10 period of time Ms. Pond was in the office prior to
11 your arrival?

12 A No.

13 Q Did you ask Ms. Pond what the condition
14 was of the papers in Mr. Foster's office when she
15 arrived in his office?

16 A No.

17 Q Did she indicate to you what the condition
18 was of the papers in Mr. Foster's office when she
19 arrived?

20 A No.

21 Q For example, she didn't indicate that
22 papers were all over Mr. Foster's desk, and she

1 entered in order to straighten the papers?

2 A The only thing that I believe she told me
3 was that she was there, that she was straightening
4 out the office.

5 Q You have no understanding of the extent of
6 the straightening which she did?

7 A No.

8 Q Did you say anything to Ms. Pond?

9 A I told her that I thought it would be
10 appropriate for her to leave Mr. Foster's office.

11 Q Why did you tell her that you thought it
12 would be appropriate to leave Mr. Foster's office?

13 A I didn't think it was appropriate for an
14 assistant to Mr. Nussbaum to be in the office at that
15 time.

16 Q Why did you not think it appropriate for
17 an assistant to Mr. Nussbaum to be in the office at
18 that time?

19 A Because I didn't believe that she was an
20 appropriate person to be making a decision about who
21 should be in the office or what, if anything, should
22 happen in the office.

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1 Q Did you believe that perhaps there might
2 be evidence relevant to Mr. Foster's death contained
3 in the office?

4 A I didn't know.

5 Q Ms. Pond then left Mr. Foster's office?

6 A That's correct.

7 Q Did you shut the door to Mr. Foster's
8 office at that point?

9 A I don't know whether I physically shut the
10 door.

11 Q Do you know Craig Livingstone?

12 A Yes.

13 Q Who was he?

14 A He is, I don't know what his official
15 title is, but he runs the Security Office in the
16 White House Office.

17 Q Did you see Mr. Livingstone in the West
18 Wing on the morning of July 21st, 1993?

19 A I don't think so.

20 MR. BARRON: Could I just, a matter of
21 clarification.

22 When you ask about the morning of July 21,

1 are you asking about when Mr. Neuwirth first arrived,
2 or at any point during the morning until noon?

3 MR. GIUFFRA: I'm asking any point in the
4 morning up until noon.

5 THE WITNESS: I don't think so.

6 BY MR. GIUFFRA:

7 Q Other than from press accounts, do you
8 have any knowledge as to whether Mr. Livingstone
9 carried a box in the West Wing on the morning of
10 July 21st, 1993?

11 A I have no knowledge of that.

12 Q You never discussed whether Mr.
13 Livingstone carried a box in the West Wing on the
14 morning of July 21st, '93?

15 A No.

16 Q Do you know Thomas Castleton?

17 A Yes.

18 Q Who is Thomas Castleton?

19 A He was one of the four staff of the
20 Counsel's Office who had a desk in the Counsel's
21 Office suite in the West Wing.

22 Q What position did he hold?

1 A I don't know what the exact title was but
2 he was a staff assistant.

3 Q Do you know whether Mr. Castleton entered
4 Mr. Foster's office on the morning of July 21st,
5 1993?

6 A I don't.

7 Q After you arrived at the Counsel's Office
8 on the morning of July 21st, 1993, you came upon Ms.
9 Pond.

10 What happened next?

11 Did you do anything?

12 Did you sit in Mr. Nussbaum's office?

13 Did you go back to your own office?

14 A I don't recall exactly what I did that
15 morning or the exact order of events that day or even
16 the day after, so I may be confusing the order of
17 things.

18 But I believe that, at some point,
19 probably around 9:00 o'clock, but maybe a little
20 earlier, Mr. Nussbaum arrived at his office in the
21 West Wing.

22 Q Were you present when Mr. Nussbaum

1 arrived?

2 A I'm not sure whether I was in the suite
3 when he showed up, or whether I came back to it and
4 saw that he was there.

5 Q Did you have any discussion with Mr.
6 Nussbaum when you first met him on the morning of
7 July 21st, 1993?

8 A I don't know whether it was immediately
9 upon his arrival, but at some point soon after 9:00
10 o'clock, some of the members of the Counsel's Office
11 staff came to his office.

12 We didn't really have a normal staff
13 meeting that day. But there was a discussion among
14 people at the White House, and I think Bill Kennedy
15 told us that he had been asked, the night before, to
16 identify Vince's body.

17 Q Do you have any knowledge as to whether
18 Mr. Nussbaum entered Mr. Foster's office on the
19 morning of July 21st, 1993 up 'til noon?

20 A I don't know whether it was exactly noon,
21 or exactly before noon, but at some point late in the
22 morning, the President came to the Counsel's Office

1 to talk to the lawyers in the office who were
2 gathering in Mr. Nussbaum's office. And while the
3 President was there, Bernie went into Vince's office
4 and took a picture of a shelf that was from Vince's
5 kindergarten class that I believe the President had
6 also been in, and Bernie showed that picture to the
7 President.

8 I also think, although again I'm not sure
9 of the exact chronology, but at some point that
10 morning, Bernie may have used the phone in Mr.
11 Foster's office, although I'm not positive. That was
12 a normal type of occurrence to the extent that in the
13 suite, the people were present, one of the ways that
14 people could make a phone call without noise was to
15 go to Vince's office and make a phone call there and
16 sit on the couch. I don't know whether it was that
17 morning, but I saw Mr. Nussbaum making a phone call
18 in Vince's office.

19 Q Do you have any recollection as to the
20 period of time in which Mr. Nussbaum was in Mr.
21 Foster's office to make a phone call?

22 A I think it was very brief and I think it

1 was a matter of having a phone to use in a quiet
2 place.

3 Q Do you have any knowledge as to whether
4 Mr. Nussbaum ever looked for a suicide note in Mr.
5 Foster's office other than from press accounts?

6 A Well, on Thursday, the 22nd, in the
7 presence of various investigators, there was a review
8 of the contents of Mr. Foster's office.

9 Q So insofar as you know, that was the first
10 time at which Mr. Nussbaum looked for a possible
11 suicide note of Mr. Foster?

12 A Based on my personal knowledge, that is
13 the first time I saw Mr. Nussbaum do that.

14 Q Did Mr. Nussbaum ever indicate to you that
15 he had looked for a suicide note prior to July 22nd,
16 1993?

17 A No, I don't think he did.

18 Again, as I told you, I had heard and seen
19 the text of a speech where those topics were
20 addressed.

21 Q Was the speech given after Mr. Nussbaum
22 had left the White House Counsel's Office?

1 A Yes. I think that the speech I saw the
2 text of was a speech that was given to the New York
3 City Bar Association and then very recently, I saw a
4 panel discussion on C-SPAN about the role of the
5 White House Counsel's Office.

6 MR. GIUFFRA: Off the record.

7 (Discussion off the record.)

8 (Recess.)

9 BY MR. GIUFFRA:

10 Q Just to direct your attention to the
11 meeting in Mr. Nussbaum's office at 9:00 o'clock in
12 the morning on July 21st, 1993, do you recall any
13 discussion at that meeting of sealing Mr. Foster's
14 office?

15 A As I said earlier, I'm not sure whether
16 the meeting occurred at 9:00 sharp, or some time
17 thereafter, and my recollection of the time of
18 particular events is a little unclear, but while
19 people were gathered, there was discussion of sealing
20 Mr. Foster's office.

21 Q Can you please describe for the record
22 what you recall about that discussion?

1 A I recall that at some point, either during
2 or right before that gathering, there had been a
3 proposal to seal Mr. Foster's office.

4 Q Do you know who made this proposal?

5 A I know that I raised that question but I
6 don't know whether others also did.

7 Q Why did you raise the question of sealing
8 Mr. Foster's office?

9 A I really asked whether it was something
10 appropriate to do, and it may have been because I had
11 seen Betsy Pond that morning. I don't remember
12 exactly why I brought it up, but I recall at least
13 initiating one discussion about it.

14 Q You initiated this discussion with Mr.
15 Nussbaum?

16 A That's correct.

17 Q Was anyone else present during this
18 discussion?

19 A Cliff Sloan may have been present and the
20 topic I think was also discussed briefly when other
21 people from the Counsel's Office legal staff were
22 present.

1 Q Do you recall anything further about those
2 discussions?

3 A Yes.

4 Q Please state for the record what you
5 recall.

6 A I recall that there weren't objections
7 raised to it. There was a question raised by
8 somebody about whether --

9 (Pause.)

10 -- There was a question raised by somebody, I'm not
11 sure who, about whether a suggestion would be made
12 that the office should have been sealed the night
13 before, and it was then sealed the next morning.
14 But, again, that was something that was really a
15 discussion point, and relatively promptly a decision
16 was made by Mr. Nussbaum to request that Mr. Foster's
17 office door be locked.

18 Q Did Mr. Foster's office door have a lock?

19 A Not at that point, although the outer door
20 to the Counsel's Office suite was secured each night
21 with an alarm, and there was a requirement to notify
22 the Secret Service upon departing. I shouldn't say

1 there was a requirement, there was a practice to
2 notify the Secret Service upon departing, and so to
3 that extent, the outer door of the Counsel's Office
4 suite had a lock, but I don't believe Mr. Foster's,
5 the door to Mr. Foster's office in the suite did have
6 a lock.

7 Q Do you recall who raised the question that
8 if the office was sealed on the 21st, some people
9 might say it should have been sealed on the 20th?

10 A I'm just not sure who raised that. I just
11 remember that that came up as a question. I don't
12 think it was presented as an argument against doing
13 it, rather than as something to anticipate might be
14 said if this were done.

15 Q Who did people think would anticipate,
16 would question the fact that the office had not been
17 sealed on the 20th?

18 A I think the focus was probably, at that
19 point, on the press, but again I'm not sure. I
20 didn't make the comment.

21 Q Did Mr. Nussbaum, at that meeting,
22 indicate that he had entered the office on July 20th,

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1 the evening of July 20th?

2 A I don't think so.

3 Q Do you have any other recollection as to
4 why you might have suggested the office be sealed?
5 (Pause.)

6 A I really don't. I think that, obviously,
7 having seen Ms. Pond in the office was something that
8 had made me suggest that she leave, and it was
9 relatively soon after that that we had these
10 discussions.

11 Q When you saw Ms. Pond, was she holding any
12 papers?

13 A I think I told you before, no, that I
14 didn't see her with papers.

15 Q Did you ever ask Ms. Pond what the state
16 of the office was before she arrived on the morning
17 of July 21st, 1993?

18 MR. BARRON: I think you have covered
19 that.

20 BY MR. GIUFFRA:

21 Q And your answer is, you don't recall?

22 MR. BARRON: I think it's a little unfair

1 to go back to areas that we've already covered and
2 ask him to cover them again. I don't want to take
3 the time to go back and find the question and what
4 his answer was, but I think you went over it pretty
5 carefully what his discussions were with Ms. Pond.

6 MR. GIUFFRA: I don't believe I asked that
7 question, that particular question.

8 Just give us the answer. The answer
9 should be the same now as it was half an hour ago.

10 MR. BARRON: Why don't we have the
11 question read back?

12 (Readback.)

13 THE WITNESS: I think I said before that I
14 don't recall discussing that.

15 BY MR. GIUFFRA:

16 Q Did you believe it to be a normal practice
17 to seal the office of someone who had been found to
18 have been killed by a gunshot wound?

19 MR. BARRON: I would have to object to
20 that one. That's my first objection of the day.

21 Normal under those circumstances is an awfully
22 difficult question to address.

1 MR. KRAVITZ: I think everyone would agree
2 that there was nothing normal about this situation.

3 BY MR. GIUFFRA:

4 Q Do you understand the question?

5 MR. BARRON: Can you make another attempt
6 at stating the question?

7 BY MR. GIUFFRA:

8 Q What was the basis for your recommendation
9 that the office be sealed?

10 MR. BARRON: That I think he's answered
11 twice now. If he can recall about his state of mind
12 when he went into Mr. Foster's office, and you also
13 asked him whether he could remember anything else
14 about his state of mind, and I think he said that he
15 couldn't.

16 BY MR. GIUFFRA:

17 Q In retrospect, do you think that the
18 advice that you gave to seal the office was correct?

19 A I don't think I said that I gave advice.
20 I raised the question, and may have even proposed
21 that it be done, but that was how I would
22 characterize what I did.

1 Q In retrospect, do you think it was an
2 appropriate step to take to seal the office following
3 Mr. Foster's death?

4 A I certainly felt comfortable and felt it
5 was appropriate when we took the step that morning to
6 seal the office at that time.

7 Q Did you have any understanding on the
8 morning of July 21st, 1993, that Park Police officers
9 were present in the West Wing lobby?

10 A I don't think that I had a sense that they
11 were present in the West Wing lobby. I was aware
12 that at some point that morning, Mr. Nussbaum, and I
13 believe also Mr. Kennedy, had a meeting somewhere in
14 the West Wing, I believe in David Watkins' office,
15 with representatives of the Park Police.

16 Q Did Mr. Nussbaum or Mr. Kennedy advise you
17 as to the discussions at that meeting?

18 A I believe the subject matter at the
19 meeting was the circumstances of Mr. Foster's death,
20 as they were known to the Park Police, but I'm not
21 sure about that. That's my best recollection of what
22 I was told about the meeting.

1 Q Did anyone indicate to you that there was
2 discussion at that meeting of the need to post Mr.
3 Foster's office?

4 A I don't know what you mean by "post."

5 Q Seal Mr. Foster's office.

6 A I don't think I was ever told that that
7 was discussed at that meeting.

8 Q Do you recall any discussion on July 21st,
9 1993, all day, of the need to enter Mr. Foster's
10 office to locate a time-sensitive Clinton Trust-
11 related document?

12 A No.

13 Q Did you have any discussions with Mr.
14 Nussbaum about the Park Police investigation on the
15 morning of July 21st, 1993?

16 A I don't know that there were any
17 discussions that morning, other than of the fact that
18 the Park Police had been involved in the discovery of
19 Mr. Foster's body, and that Mr. Nussbaum and Mr.
20 Kennedy had met with them.

21 But, again, as I said, my sense of exact
22 chronology is a little difficult.

1 Q Did there come a time on July 21st, 1993,
2 in which the process for reviewing the documents in
3 Mr. Foster's office was discussed?

4 A Yes.

5 Q Could you describe for the record when
6 that occurred?

7 A I am not sure again what time during the
8 day it was. But I believe that at some point during
9 the afternoon of the 21st, there was a meeting that
10 included David Margolis, I believe another attorney
11 named Gordon Adams from the Justice Department, that
12 may also have included representatives of the Park
13 Police, but I'm not sure, at which the question of
14 how to review the material in Mr. Foster's was
15 discussed.

16 Q Do you recall if there were any FBI agents
17 present?

18 A I'm not sure, but there might have been.

19 Q Where was this meeting held?

20 A In Mr. Nussbaum's office.

21 Q What do you recall about the meeting?

22 A I recall that the discussion focused on

1 the fact that because Mr. Foster was both a senior
2 advisor to the President and an attorney, a White
3 House lawyer, that the materials in his office and
4 any review of those materials would raise questions
5 of both executive privilege and attorney-client
6 privilege, and that therefore it was necessary, in
7 thinking about the process, to try to accommodate the
8 law enforcement objectives of the Park Police and the
9 legitimate privilege issues that related to the
10 Presidency and the Executive Branch.

11 Q Do you recall any discussion of allowing
12 the Department of Justice lawyers to review the
13 documents in Mr. Foster's office?

14 A Mr. Margolis, I think, accepted the
15 premise that these privilege issues existed. His
16 suggestion, as I best recall, was that he or that
17 someone else from the Justice Department could play
18 the role of reviewing the documents to determine
19 whether the documents at issue were privileged or
20 whether there was, in any particular location,
21 something like a suicide note.

22 Q Did Mr. Margolis indicate to you, or to

1 the people who were present at the meeting, why he
2 believed someone from the Department of Justice, as
3 opposed to the White House, should review the
4 documents in Mr. Foster's office?

5 A My sense was -- I don't know exactly why
6 Mr. Margolis proposed this. I do recall him saying
7 that he thought it was in the interests of the White
8 House to let the Justice Department play this role.

9 Q And you have no recollection as to why he
10 thought it was in the interests of the White House to
11 let the Justice Department play this role of
12 reviewing the documents in Mr. Foster's office?

13 A Well, I don't know what he thought was the
14 reason, but my sense, from what he said, was that the
15 Justice Department was, that people at the Justice
16 Department were not part of the White House Staff,
17 and that it might appear better if the Justice
18 Department played the role of reviewing the materials
19 for privilege issues, and to determine if there was
20 any suicide note.

21 Q Was it your impression that Mr. Margolis
22 thought that the Justice Department lawyers would be

1 more independent than the White House lawyers?

2 A I think he can only testify about what Mr.
3 Margolis said, as opposed to what Mr. Margolis
4 thought.

5 MR. GIUFFRA: I was asking what his
6 impression was.

7 THE WITNESS: As I said before, I don't
8 know what Mr. Margolis thought personally. And he
9 did not ever say that he thought Justice Department
10 lawyers were more independent.

11 BY MR. GIUFFRA:

12 Q Do you recall anything else?

13 A Or if he said that, he didn't say it in my
14 presence.

15 Q Do you recall anything else Mr. Margolis
16 said on the subject of whether Justice Department
17 lawyers should review the documents in Foster's
18 office?

19 A I don't.

20 Q Did you object to allowing Justice
21 Department lawyers to review documents in Mr.
22 Foster's office?

1 A I did not personally object during that
2 meeting.

3 MR. BARRON: Can I just, for purposes of
4 clarification.

5 When you asked whether Mr. Neuwirth
6 objected, are you trying to find out what Mr.
7 Neuwirth said in the presence of the Justice
8 Department people, or what his view was at the time
9 on the question of whether or not it was a good idea
10 for the Justice Department people to review White
11 House documents for privilege?

12 I think there's an ambiguity on that
13 question.

14 MR. GIUFFRA: Let's ask both questions.

15 BY MR. GIUFFRA:

16 Q First, did you say anything in the
17 presence of the Justice Department officials with
18 regard to whether it was a good idea to let the
19 Justice Department officials review the documents in
20 Foster's office?

21 A I don't think that I stated a view during
22 that meeting on that particular topic, or at least I

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1 don't recall saying anything about that.

2 Q Do you recall whether anyone from the
3 White House stated a view at that meeting?

4 A I think that Mr. Nussbaum expressed his
5 concern that these privileges could be waived, in
6 whole or in part, if someone from outside the White
7 House, in the case of attorney-client privilege,
8 someone from outside the White House Counsel's Office
9 were to be involved in reviewing these files.

10 Nothing was resolved, as I understood it,
11 at that meeting, but these issues, as I best recall,
12 were raised by Mr. Nussbaum.

13 Q What was the tone of the discussion
14 between the Justice Department and the White House
15 officials at this meeting?

16 A My sense was everyone understood that this
17 was a very difficult issue because of the
18 circumstances under which it was arising, namely,
19 that you had the office of a senior advisor to the
20 President and a White House attorney.

21 Q So you would not describe this as a heated
22 meeting?

1 A I would not.

2 Q Was any understanding reached at this
3 meeting with the Justice Department officials as to
4 the procedure that would be used to review the
5 documents in Mr. Foster's office?

6 A I don't believe that one was.

7 Q After the meeting was over, did you
8 express any view to Mr. Nussbaum as to your views
9 with regard to how the documents in Mr. Foster's
10 office should be reviewed?

11 A I'm not sure what my exact words were, or
12 whether I had a conversation immediately after this
13 meeting. My best recollection is that my position
14 was that it was necessary to accommodate not just the
15 executive privilege and attorney-client privilege
16 issues, but also the Park Police concern about
17 reviewing the materials.

18 My view is that it was necessary in this
19 context to come up with an accommodation that would
20 maximize the opportunity to take account of both sets
21 of interests.

22 Q Do you recall expressing any objection, in

1 the presence of either Mr. Nussbaum or Mr. Sloan, to
2 allowing Justice Department lawyers to review the
3 documents in Mr. Foster's office?

4 A I don't recall having raised an objection.
5 Again, I may have agreed that that type of procedure
6 could be problematic from the perspective of the
7 privileges at issue.

8 Q Why would allowing the Justice Department
9 lawyers to review the documents be problematic in
10 terms of Executive privilege?

11 MR. KRAVITZ: You're asking him what he
12 thought on July 21, 1993, or what he thinks now?

13 MR. GIUFFRA: We'll ask both questions.

14 BY MR. GIUFFRA:

15 Q Do you recall any specific discussions as
16 to why allowing the Justice Department officials to
17 review the documents would be problematic from the
18 stand point of Executive privilege?

19 A I think that the words I used were, could
20 be problematic, and I think, again I'm not sure
21 whether I said this or someone else said it and at
22 what time it was said, but I think that the general

1 sense was that certainly with respect to attorney-
2 client privilege, and attorney-client communication
3 retains its privilege as a general matter until you
4 share the content of the communication with someone
5 who's not part of the attorney-client relationship,
6 and I don't think the Justice Department was
7 understood to have been part of the attorney-client
8 relationship between the White House Counsel's Office
9 and members of the White House Staff.

10 And with respect to Executive privilege, I
11 think that there was a sense that the Executive
12 privilege that attaches to communications with the
13 President or that relates to work for the President
14 may be undermined to the extent that something is
15 shared with people who are not part of the
16 communication with the President or the work that's
17 being done for him.

18 Q So if the communication was between
19 someone in the White House Counsel's Office and the
20 President, there would be some undermining of the
21 privilege?

22 A I didn't say there would be. I said the

1 concern was that you could possibly waive an
2 attorney-client privilege if you shared materials
3 with someone who is not part of the attorney-client
4 relationship.

5 Q What about with regard to Executive
6 privilege?

7 A Do you want me to say again what I just
8 said?

9 Q What is the procedure that --
10 Strike that.

11 What procedures did the White House follow
12 in July 21st, 1993, with regard to assertions of
13 Executive privilege?

14 A I don't think Executive privilege was ever
15 asserted, certainly with respect to anything in Mr.
16 Foster's office on that day.

17 Q I'm just trying to understand.

18 It's my understanding that the President
19 was the only person in the Executive Branch who can
20 assert Executive privilege.

21 Q Executive privilege wasn't asserted.

22 Q My question is not with regard to

1 documents in Foster's office, but just generally.

2 In your capacity as Associate White House
3 Counsel, you have some understanding of how the
4 President goes about asserting Executive privilege,
5 right?

6 A Well, I don't know that President Clinton
7 has ever asserted Executive privilege, but if, to the
8 extent there's been an assertion of privilege in the
9 past, my understanding is that, like with so many
10 other matters, like with so many other things the
11 President does, the President's Staff works on
12 matters that are within the President's ultimate
13 decisional jurisdiction and will present issues to
14 the President or make recommendations relating to
15 those issues as they arise.

16 Again, this was not a context where I
17 believe -- I'm not aware of any assertion of
18 Executive privilege during this period, the 21st and
19 the 22nd, with respect to these documents.

20 Q Are you aware of any assertion of
21 Executive privilege with regard to these documents at
22 any time?

1 A I actually am not.

2 Q Was any concern expressed that the ability
3 to assert Executive privilege would be waived if
4 lawyers outside the White House reviewed any of the
5 documents in Mr. Foster's office?

6 A As I said before, there was concern that
7 showing the content of privileged materials to
8 someone outside the communication with the President
9 or outside the sphere of the work being done for the
10 President could create a waiver of privileges.

11 Q Isn't the Justice Department part of the
12 Executive Branch?

13 A Yes.

14 Q Isn't the Attorney General commonly
15 referred to as the President's lawyer?

16 A I don't know. I mean, I don't know how
17 people refer to that.

18 Q Do you know whether the Justice Department
19 ever gets involved in matters relating to Executive
20 privilege?

21 A The Justice Department is often consulted
22 about the precedents for the assertion of Executive

1 privilege and is often asked for their opinion about
2 whether particular materials are privileged.

3 Q In such cases, are documents shown to
4 Justice Department lawyers?

5 A I don't know the circumstances in which
6 this has occurred, so I don't know.

7 Q Do you have any understanding at all,
8 though?

9 A It's difficult. I'm not aware of any
10 situation analogous to the one that we faced on the
11 21st.

12 Q How about any situation since you've been
13 at the White House?

14 A I am aware of situations where the Justice
15 Department, in the context of giving advice to the
16 White House, has looked at documents to determine
17 whether, in the view of the Justice Department, they
18 are subject to a claim of Executive privilege.

19 Q Do you recall the occasion upon which that
20 occurred?

21 (Discussion off the record.)

22 MR. BARRON: I think, first of all, this

1 is pretty far afield from the Resolution, as I
2 understand it, but more important, discussion of the
3 subject matter, the timing of this may raise the same
4 kinds of questions about potential waiver that were
5 in fact the subject of discussion.

6 I say that without having any knowledge
7 about what Mr. Neuwirth is referring to but I can
8 certainly see that that would be a problem.

9 MR. GIUFFRA: I think the record can stand
10 as it is.

11 BY MR. GIUFFRA:

12 Q Do you know of any instances in which the
13 Justice Department has advised the President with
14 regard to the assertion of attorney-client privilege?

15 (Pause.)

16 A There may have been one litigation I was
17 familiar with in which there was a request by a non-
18 governmental party for documents, and I think the
19 Justice Department brief may have addressed attorney-
20 client privilege issues.

21 Other than that, I'm just not recalling
22 right now a situation where attorney-client privilege

1 per se is a topic that I'm aware that the Department
2 was asked to give advice about.

3 Q As of July 21st, 1993, what position did
4 Philip Heymann hold?

5 A Deputy Attorney General.

6 Q Do you know if Mr. Nussbaum had any
7 conversations with Mr. Heymann on July 21st with
8 regard to the procedure that would be used to review
9 the documents in Mr. Foster's office?

10 A I don't know whether he had a conversation
11 on July 21st or July 22nd with Mr. Heymann.

12 I was aware that Mr. Nussbaum had spoken
13 to him.

14 Q Were you present during those
15 conversations?

16 A Well, I may have been. I really don't
17 think I was. I really don't think so, but it's
18 possible.

19 Q What do you recall about any conversations
20 between Mr. Heymann and Mr. Nussbaum with regard to
21 the procedure that would be used to review documents
22 in Mr. Foster's office?

1 A It was my understanding that they had
2 discussed that topic, but I don't really know at this
3 point, and I don't think I ever knew exactly what the
4 details were of that discussion.

5 Q Did Mr. Nussbaum ever indicate to you that
6 Mr. Heymann believed that Justice Department lawyers
7 should review the documents in Mr. Foster's office?

8 A I know that Mr. Margolis expressed that
9 view. I don't know whether that was Mr. Heymann's
10 own view.

11 Q So your testimony is, you don't recall any
12 discussion with Mr. Nussbaum with regard to Mr.
13 Heymann's views as to the procedure for reviewing the
14 documents in Mr. Foster's office?

15 A I don't think that's what I said. I think
16 I said that I was aware that Mr. Nussbaum had spoken
17 to Mr. Heymann. It's possible that I was present,
18 but I don't think so, and I'm not sure and I don't
19 recall what Mr. Heymann's personal views were about
20 this, and I'm not sure if I ever knew them. If I did
21 know them, I really don't remember them.

22 I have a recollection of what Mr. Margolis

1 said his position was.

2 Q When you say Mr. Heymann's personal views,
3 are you contrasting those with the Department of
4 Justice's views?

5 A I don't know to what extent Mr. Margolis
6 was speaking for the Department or for himself.

7 Q Do you know whether Mr. Nussbaum spoke to
8 Attorney General Reno with regard to the procedures
9 that would be used to review the documents in Mr.
10 Foster's office?

11 A I don't know.

12 Q Do you have any knowledge with regard to
13 whether anyone at the Department of Justice was angry
14 at Mr. Nussbaum with regard to the procedure that
15 would be used to review documents in Mr. Foster's
16 office?

17 MR. KRAVITZ: At what time?

18 MR. GIUFFRA: As of July 21st, 1993.

19 THE WITNESS: If I can answer about July
20 21st and July 22nd, because I don't know what
21 happened on which day.

22 BY MR. GIUFFRA:

1 Q I understand.

2 A If anyone was angry, that anger was not
3 expressed in my presence.

4 I know that Mr. Margolis maintained his
5 view that the best procedure would have been for the
6 Justice Department to play the type of role that Mr.
7 Nussbaum ultimately played in the review that
8 occurred on the 22nd.

9 Q Do you know whether Mr. Nussbaum spoke to
10 Webster Hubbell on July 21st, 1993, with regard to
11 the documents in Mr. Foster's office?

12 A I don't know if he did.

13 Q Do you know if Mr. Nussbaum spoke with
14 Maggie Williams on July 21st, 1993, with regard to
15 the documents in Mr. Foster's office?

16 A I don't know if he did.

17 Q Do you know whether Mr. Nussbaum spoke
18 with the First Lady on July 21st, 1993, with regard
19 to the documents in Mr. Foster's office?

20 A I don't know.

21 Q Again, when you say you don't know, you
22 have absolutely no recollection or only have a vague

1 recollection?

2 A I have no knowledge whatsoever of any
3 conversations that you've just asked me about.

4 Q Did you speak with Maggie Williams on July
5 21st, 1993?

6 A I'm not sure. There was an assembly in
7 Room 450 of the Old Executive Office Building in
8 which the President addressed the White House Staff
9 following Vince's death. She may have been there and
10 I may have seen her there.

11 Q We received records from the White House
12 indicating that Ms. Williams tried to contact you at
13 1:22 p.m. on July 21st.

14 Does that refresh your recollection?

15 A No.

16 Q You have no knowledge as to why she might
17 have been trying to contact you on July 21st, 1993?

18 A I don't remember why, if she did, and I
19 don't know whether we ultimately spoke.

20 Q Do you recall any discussions on July
21 21st, 1993, with regard to the retrieval of trash
22 from Mr. Foster's office?

1 A As I indicated earlier, I became aware at
2 some point that trash, or at least trash as I
3 understood it to be, may have been retrieved after it
4 had been removed in the normal course of cleaning the
5 White House. I don't know when I became aware of
6 that. I really don't know whether I was aware of
7 that on the 21st of July.

8 Q Who was Carolyn Huber?

9 A Carolyn Huber works on the White House
10 Staff.

11 Q Do you know anything more specifically
12 about what function she serves on the White House
13 Staff?

14 A I actually don't know what her full scope
15 of official duties is.

16 Q Prior to July 21st, 1993, did you ever
17 have any contacts with Carolyn Huber?

18 A My best recollection is that I did not.

19 Q As of July 21st, 1993, did you have any
20 understanding as to whether Mr. Nussbaum had any
21 contact with Carolyn Huber?

22 A I don't know whether he did, and I didn't

1 know then.

2 Q Do you recall ever seeing Carolyn Huber in
3 the White House Counsel's Office suite in the West
4 Wing as of July 21st, 1993?

5 A I don't have a recollection of that. And
6 as of July 21st, 1993, I'm not sure I knew who
7 Carolyn Huber was.

8 Q Do you have any knowledge with regard to
9 whether Mr. Nussbaum tried to contact Carolyn Huber
10 on July 21st, 1993?

11 A I do not know whether he did.

12 Q Do you have any knowledge with regard to
13 whether David Gergen --

14 Strike that.

15 What position did David Gergen hold at the
16 White House as of July 21st, 1993?

17 A I think his title was Counselor to the
18 President.

19 Q Was it your understanding that Mr. Gergen
20 reported directly to the President?

21 A I don't know exactly what his reporting
22 relationship was; whether he went through the Chief

1 of Staff, or whether he reported directly to the
2 President.

3 Q Do you have any knowledge as to whether
4 Mr. Nussbaum spoke with David Gergen on July 21st,
5 1993?

6 A I have no knowledge as to whether he did
7 or didn't.

8 Q Do you have any knowledge as to any
9 conversations between Mr. Nussbaum and Mr. Gergen
10 having any bearing on the handling of documents in
11 Mr. Foster's office?

12 MR. BARRON: As of?

13 MR. GIUFFRA: Any time?

14 THE WITNESS: Yes.

15 BY MR. GIUFFRA:

16 Q Could you please describe those
17 conversations?

18 A I'm only aware of one conversation which
19 took place on the Monday following Mr. Foster's
20 death, after I found the note in Mr. Foster's office.

21 Q What do you recall about that
22 conversation?

1 A I recall that it took place in Mr.
2 Nussbaum's office. Mr. McLarty and Mr. Gergen were
3 in Chicago. It was a conversation in which Mr.
4 Nussbaum talked about the note that had been found,
5 and in the conversation, it was discussed that the
6 President, who was in Chicago, had a busy schedule
7 and would not be returning to Washington until the
8 next day.

9 And it was discussed that somebody knew
10 that Lisa Foster, Mr. Foster's wife, would be in
11 Washington the next day. And I think it was felt by
12 those in the conversation that it was important to
13 give Mrs. Foster a chance to see the note before
14 anything was done with it, and that it was also
15 appropriate to show the note, or at least tell the
16 President about the note before anything was done.

17 Q Do you know Thomas Collier?

18 A I think I'm aware of a Tom Collier who
19 works at the Interior Department. I may be wrong
20 about that, but that's the only place where I've
21 heard that name.

22 Q Have you ever spoken to Mr. Collier?

1 A It's possible that I've been in meeting.

2 Q Do you recall ever speaking to Mr. Collier
3 with regard to anything having to do with Mr.
4 Foster's death?

5 A I don't recall ever having said anything
6 to him about that.

7 Q Do you know if Mr. Gergen ever spoke to
8 Mr. Collier with regard to the Park Police's
9 investigation of Mr. Foster's death?

10 A I don't know whether he ever did.

11 (Pause.)

12 Q Do you have any knowledge as to whether
13 any resolution was reached on July 21st, 1993, as to
14 the procedure that would be used to review the
15 documents in Mr. Foster's office?

16 A I do not believe that one was.

17 Q So this remained an open question until
18 the 22nd, the procedure?

19 A I'm not sure what you mean by open
20 question, but the procedure that was ultimately used
21 during the review I don't believe had ever been
22 resolved on the 21st.

1 Q Do you recall attending an interview of
2 Mr. Nussbaum with Park Police investigators on the
3 afternoon of July 21st, 1993?

4 A I recall attending that interview. I'm
5 not positive again whether it was on the afternoon of
6 the 21st, but that sounds right to me.

7 Q What do you recall about that interview?

8 A I recall that several hours before the
9 interview, the Park Police, or a representative of
10 the Park Police, that may have been one of the people
11 who conducted the interview, called to say that they
12 wanted to interview Mr. Nussbaum.

13 And I believe that either during that
14 conversation or when I called back to confirm that
15 the interview could take place that day, I indicated
16 that Cliff Sloan and I were planning to sit in on the
17 interview.

18 The only other thing I recall about it is
19 that the interview took place in Mr. Nussbaum's
20 office and that Mr. Sloan and I were present. I
21 think there were two Park Police agents, and I don't
22 recall whether any representatives of any other

90

1 agencies were present during that interview.

2 Q Do you have any knowledge as to whether
3 Park Police investigators were in any way frustrated
4 with their treatment by the White House on July 21st,
5 1993?

6 A If they were frustrated, they did not
7 express that to me.

8 Q Let me just show you a document which is
9 marked as Park Police 29. This is a Park Police
10 supplemental criminal incident record entitled
11 "Bernard Nussbaum 7/21/93 Interview," signed by an
12 Agent Markowitz.

13 I just want to see whether this refreshes
14 your recollection at all with regard to the interview
15 with Mr. Nussbaum.

16 (Handing document to witness.)

17 MR. BARRON: How have we marked this?

18 MR. GIUFFRA: We're basing it on the Bates
19 stamp number at the bottom, so we're marking it Park
20 Police 29.

21 BY MR. GIUFFRA:

22 Q If you could read this document and see if

1 it refreshes your recollection as to what happened
2 during this interview.

3 (Pause.)

4 A Okay.

5 MR. GIUFFRA: Let's let Neal take a look
6 at it quickly.

7 (Handing document to counsel.)

8 BY MR. GIUFFRA:

9 Q Does reviewing this report in any way
10 refresh your recollection with regard to that
11 interview of Mr. Nussbaum by the Park Police?

12 A I see what the report says. There is a
13 lot in this document that I don't remember
14 personally.

15 Q Is there anything that you do remember
16 that's in the document?

17 MR. BARRON: Right now, you're asking for
18 any independent recollection that he has now, having
19 looked at this document, about that event, the
20 interview with Mr. Nussbaum?

21 MR. GIUFFRA: Correct.

22 THE WITNESS: I don't know how you want me

1 to do this, line by line, or generally.

2 BY MR. GIUFFRA:

3 Q You can go through it line by line, if you
4 want.

5 A I know that there were discussions with
6 the Department of Justice that, as I told you I think
7 took place on the 21st. I don't know whether I
8 recalled the negotiations, but there were
9 discussions.

10 I don't know whether the time that they
11 were completed is correct.

12 I don't have any basis for questioning the
13 names of the people who attended.

14 I don't know personally whether this was a
15 conversation in which arrangements were made for
16 interviews and a search of Mr. Foster's office on
17 July 22nd that may have come up.

18 I don't have any reason to dispute that
19 Mr. Nussbaum said the things that it says here that
20 he said. I just don't have a personal recollection
21 that he talked about, in this detail, what had
22 happened the night before. He may have talked about

1 it, but it may also not have been something that
2 struck me as significant at the time.

3 And I just don't, today, have my own
4 personal recollection that these things were said.
5 Reading this is not changing that.

6 Q I believe it's your testimony that you
7 don't have any recollection of ever speaking to Mr.
8 Nussbaum about what actions he might have taken on
9 the night of July 20, 1993, with regard to Mr.
10 Foster's office?

11 A What I said before, I think a couple of
12 times, was that I've heard Mr. Nussbaum.

13 Q Other than speeches.

14 A It's difficult for me to be sure whether I
15 ever discussed it with him, as opposed to having
16 heard it in the speech. It's possible that I talked
17 to him about it, but I don't recall the conversation
18 when I did.

19 Q Okay.

20 Let's direct your attention to July 22nd.
21 On July 22nd, did the Park Police interview some of
22 the secretaries and the support staff in the

1 Counsel's Office?

2 A Yes.

3 Q What do you recall about those interviews?

4 A I should say I'm pretty sure it was on the
5 morning of the 22nd. I'm not positive.

6 What I recall is that the requests to
7 conduct the interview were made to the White House
8 Counsel's Office, I think to Mr. Nussbaum, not
9 directly to the people who were interviewed. And
10 that Counsel's Office was asked to make these people
11 available.

12 I recall that Mr. Sloan and I sat in on
13 different interviews that were conducted.

14 Q Who asked you to sit in on those
15 interviews?

16 A Mr. Nussbaum determined that it was
17 appropriate for us to sit in on the interviews. And
18 as I indicated on, I guess it was Wednesday
19 afternoon, the Park Police had not objected, at least
20 in my presence, to Mr. Sloan and I sitting in on
21 their interview with Mr. Nussbaum.

22 Q Do you know if the Park Police ever

1 objected to your sitting in on the interviews of any
2 of the secretaries or support staff?

3 A If they objected, they did not object to
4 me.

5 Q Do you know if they ever objected to Mr.
6 Nussbaum?

7 A I'm not aware of any objections. I have
8 no personal knowledge of any objections they may have
9 raised.

10 Q Do you recall having a meeting with the
11 secretaries on the evening of July 21st, to prepare
12 them for the interviews on the 22nd?

13 A I'm not sure that we had any meeting on
14 the evening of the 21st, as opposed to the morning of
15 the 22nd. And I don't think I would use the word,
16 prepare, if what you mean is prepare in the sense of
17 how you might prepare a witness for a deposition in
18 private litigation.

19 As I told you earlier, these requests for
20 the interviews were made to the White House, and so
21 we were responsible for letting the four people who
22 worked in that outer office know that a request had

1 been made to interview them.

2 We explained why they were being asked to
3 be interviewed. I think they were all very upset
4 about Mr. Foster's death and we tried to, I think,
5 just help make them calm. And I think that we
6 advised them that we were not aware of any facts or
7 circumstances that would require them, for example,
8 to obtain their own counsel during the interviews.

9 I also think that it may have been -- I'm
10 just not sure when on the 21st or the 22nd this
11 occurred -- but in connection with our own
12 responsibilities in the White House Counsel's Office
13 after learning of Vince's death, we talked to those
14 four people, I don't know whether it was individually
15 or separately, about what if anything they knew about
16 Mr. Foster's death and what they knew about what had
17 happened the day before.

18 He was someone we had worked with, and I
19 think we were all trying to find out what had
20 happened.

21 Q And this would have been before the Park
22 Police interviews?

1 A Yes.

2 Q Sort of --

3 Strike that.

4 This would have been Ms. Gorham, Ms.
5 Tripp, Mr. Castleton, and Ms. Pond?

6 A It is my best recollection that we spoke
7 to all four of them. Again, I don't know whether it
8 was together or separately, or whether Cliff and I
9 and Bernie spoke to all of them, or whether different
10 people spoke to one or more of them.

11 Q Just to get an understanding of what their
12 recollection was with regard to Mr. Foster's
13 activities prior to his death?

14 A I know that that was the principal purpose
15 of those discussions, and I think it was, as I said,
16 to find out if there was anything anybody knew about
17 what had happened.

18 Q Did you have a good working relationship
19 with Ms. Gorham?

20 A I think we got along well. Our only real
21 contact was in connection with talking to her about
22 either trying to get in touch with Mr. Foster or

1 transferring something from him to me. And I think
2 we had the usual friendly relationship that people
3 working in the same office have.

4 Q What was the nature of your relationship
5 with Ms. Pond?

6 A I would say it was the same, except that
7 she worked for Mr. Nussbaum.

8 Q And Ms. Tripp?

9 A The same.

10 Q Did you advise any of the support staff
11 and secretaries with regard to how they should answer
12 questions during these Park Police interviews?

13 A I don't think that I would say that there
14 was advice given. I do think that either I or
15 someone else may have just made reference to the fact
16 that it was important to tell the truth, but I think
17 that this was really in the context of trying to just
18 tell them that there was nothing, they weren't being
19 accused of anything. There was nothing extraordinary
20 here, that they should understand that it was normal
21 for people to be interviewed.

22 I think these were people who didn't

1 really have experience dealing with these types of
2 circumstances.

3 Q Other than from press accounts, do you
4 have any knowledge as to whether the Park Police ever
5 registered any complaints about your presence during
6 those interviews?

7 A I have never. No complaints were
8 expressed to me, and I haven't heard.

9 Q Did you hear of any complaints that were
10 expressed to Mr. Nussbaum?

11 A I did not.

12 Q Did Mr. Nussbaum attend any of these
13 interviews?

14 A I'm not sure whether he did. It's
15 possible that he may have walked in or out, but I
16 really am not sure.

17 Q Do you recall a meeting on July 22nd in
18 the morning to discuss the procedure that would be
19 used to the review the documents in Mr. Foster's
20 office?

21 A Yes.

22 Q When did that meeting occur?

100

1 A I believe it was some time in the late
2 morning, mid-to-late morning. And it was a meeting
3 in the White House that included --

4 Q This would have been in Mr. Nussbaum's
5 office?

6 A No. I believe that this was, this may
7 have been in Mr. McLarty's office, although I don't
8 think Mr. McLarty was present.

9 It was a discussion that included Bill
10 Burden of Mr. McLarty's staff, Bernie Nussbaum. I
11 was present. I think Bruce Lindsey was present for a
12 lot of the discussion, although I don't think all of
13 it. And at one point, the meeting moved temporarily
14 to the Vice President's suite of offices, which is
15 next to Mr. McLarty, and Jack Quinn participated
16 briefly in the discussion.

17 Q What do you recall about the portion of
18 the meeting that occurred in the Chief of Staff's
19 suite?

20 A Well it's hard for me to distinguish
21 between the two portions of the meeting, except that
22 Mr. Quinn was not present at the part of the meeting

1 in the Chief of Staff's office.

2 Q Do you have any recollection as to why the
3 meeting moved?

4 A I think Mr. McLarty may have needed to use
5 his office for another meeting; I'm not sure.

6 Q So what do you recall about this
7 particular meeting?

8 A I recall that it was a continuing
9 discussion about the problem that Mr. Foster, as a
10 senior White House official and member of the White
11 House Counsel's Office, had an office with documents
12 that could implicate privileges, and the principal
13 focus of the discussion was the consideration of the
14 long-term implications for the presidency that could
15 flow from how this matter might be handled.

16 And I think there was a real concern on
17 the part of the people in the meeting that precedents
18 could be set in this process that could have a
19 substantial -- that could create some erosion, and
20 perhaps a substantial erosion of what was already
21 perceived to be an eroded set of presidential
22 privileges.

1 Q So was the concern expressed that allowing
2 the Department of Justice lawyers to participate in
3 this review process would erode presidential
4 privileges?

5 MR. BARRON: If by participate -- you may
6 have to be a little more precise about that.

7 BY MR. GIUFFRA:

8 Q Was the concern expressed that allowing
9 Department of Justice lawyers to review the documents
10 in Mr. Foster's office would further erode what you
11 described as presidential privileges?

12 A I think that the people in the meeting
13 were aware that the Justice Department had proposed
14 that it play the type of role that Mr. Nussbaum
15 ultimately played in the process, but I think people
16 also had the sense that the Justice Department
17 recognized that there were legitimate privilege
18 issues, and the question was: how do you accommodate
19 them.

20 I do think that while I don't know how
21 much time was spent on the particular question of Mr.
22 Margolis' proposal, I do think that there was a sense

1 that had been expressed the day before in the meeting
2 with Mr. Margolis that, to the extent that you share
3 the content of documents with people who are not part
4 of an attorney-client communication or part of the
5 communication to and from the President, you can
6 perhaps waive the privileges that are at issue.

7 Q Do you know whether anyone ever did any
8 legal research to ascertain whether such waivers
9 would occur?

10 A I don't know.

11 Q Did anyone ever discuss having someone
12 perform such legal research?

13 A I don't know. That was discussed but I
14 don't believe it was discussed in my presence.

15 Q During the conversations that you had on
16 the 22nd, was any discussion raised as to what Mr.
17 Heymann's views were with regard to how the review of
18 documents in Mr. Foster's office should proceed?

19 A Again, I'm just not sure whether the
20 proposal that had been made by Mr. Margolis was
21 talked about as the Justice Department's view, Mr.
22 Heymann's view, or Mr. Margolis' view. It's a little

1 hard for me to distinguish one from the other right
2 now.

3 Q Do you recall any discussion on either the
4 21st or the 22nd of the fact that judges sometimes
5 review documents in camera to ascertain whether the
6 attorney-client privilege should apply?

7 A I don't recall that comment.

8 Q Do you recall anything with regard to the
9 views expressed by Mr. Nussbaum at this meeting on
10 July 22nd?

11 A I think that Mr. Nussbaum was trying his
12 best to address the very difficult problem that was
13 presented in this very special circumstance where Mr.
14 Foster was both a senior White House official and a
15 lawyer, and where the Park Police wanted to have
16 access to his office.

17 Q Do you recall him expressing a final
18 opinion or view?

19 A I don't know at what point Mr. Nussbaum
20 made his ultimate determination that the process
21 would be what it was. I don't know whether it was at
22 the conclusion of that meeting, or some time

1 afterwards.

2 Q Did Mr. Sloan express any views at this
3 meeting on July 22nd?

4 A I don't know if Mr. Sloan was present in
5 the meetings that I described to you.

6 Q Did Mr. Burden express any views as to the
7 process that should be used to review the documents
8 in Mr. Foster's office?

9 A I think Mr. Burden, who is himself an
10 attorney, was very concerned about the privilege
11 implications if whatever process would be used. I
12 don't think anybody reached ultimate conclusions or
13 expressed ultimate conclusions. I think people were
14 just very aware of the difficulty.

15 And Mr. Burden, I think, wanted to ensure
16 that these privilege issues were given full
17 consideration before a final decision was made.

18 Q Did Mr. Lindsey express a view?

19 A I don't know what Mr. Lindsey said during
20 the meeting. I don't think he said a lot. I just
21 don't remember what position he expressed.

22 Q Mr. Quinn, what was his position?

1 A At that time, I think he was either Acting
2 Chief of Staff or Chief of Staff to the Vice
3 President.

4 Q Is Mr. Quinn a lawyer?

5 A Yes. And prior to that, having assumed
6 that position, he had very recently before been
7 counsel to the Vice President.

8 Q Did Mr. Quinn have a view that he
9 expressed at the meeting on July 22nd?

10 A While he didn't state any ultimate
11 conclusions, Mr. Quinn, like Mr. Burden, was very,
12 very concerned, particularly about the long-term
13 implications for the presidency, of any precedents
14 that would be set in this very highly publicized
15 context.

16 Q Do you recall if anyone at the meeting
17 expressed the view that persons who did not work at
18 the White House should at least have an opportunity
19 to review the documents in Mr. Foster's office?

20 A I don't believe that that view was
21 expressed. I think that most people, or I think the
22 only views I remember being expressed in the meeting

1 were that that type of procedure could create a
2 waiver of these privileges or set a precedent that
3 would make it difficult in the future to protect
4 those privileges.

5 Q Was there any discussion at this meeting
6 of the need to allow law enforcement officers to make
7 the judgments as to what documents might be relevant
8 to their investigation?

9 A Yes.

10 Q What do you recall about that discussion?

11 A I recall that that was the consideration
12 that I think people felt needed to be given full
13 weight in deciding what process would be used. I
14 think that is why the procedure that was ultimately
15 used allowed all of the investigators to be present
16 in Mr. Foster's office while Mr. Nussbaum showed them
17 where materials were located and described the
18 materials in the office.

19 Q At the conclusion of this meeting, was any
20 decision reached as to how the review process would
21 proceed, or was it just left to Mr. Nussbaum to make
22 the final decision?

1 A I think, as I said before, that there was
2 no final decision made. I'm not sure when the final
3 decision was made by Mr. Nussbaum. It may have been
4 at the end of the meeting, it may have been later. I
5 am just not clear on when the ultimate determination
6 was made on the procedure to be used.

7 Q Do you know if Mr. Nussbaum ever spoke to
8 the First Lady with regard to the procedure that
9 would be used to review the documents in Mr. Foster's
10 office?

11 A I don't know.

12 Q Do you know whether Mr. Nussbaum ever
13 spoke to Maggie Williams about the procedure that
14 would be used to review the documents in Mr. Foster's
15 office?

16 A I don't know.

17 Q Other than persons whom you've identified
18 so far, do you know of anyone else that Mr. Nussbaum
19 spoke to with regard to the procedure that would be
20 used to review the documents in Mr. Foster's office?

21 MR. BARRON: You're asking about people
22 other than people who were in this series of

1 meetings, or are you talking about those individuals?

2 MR. GIUFFRA: No.

3 BY MR. GIUFFRA:

4 Q Excepting the people who were present at
5 this meeting and the Justice Department officials, do
6 you know of anyone else that Mr. Nussbaum spoke to
7 with regard to the procedure that would be used to
8 review the documents in Mr. Foster's office?

9 A I think that it's possible that there may
10 have been discussions at some point with Park Police
11 officials, and I don't know whether FBI officials
12 were ever included in any of the discussions that
13 took place with Mr. Margolis.

14 I don't have personal knowledge of this,
15 but Mr. Nussbaum made reference, in a conversation
16 with me, to a conversation he had had with Susan
17 Thomases.

18 Q Who is Susan Thomases?

19 A She is an attorney in New York.

20 Q What law firm is she an attorney with?

21 A I think Willkie, Farr & Gallagher.

22 Q Is Susan Thomases a close friend of the

1 First Lady?

2 MR. BARRON: Wait a minute.

3 MR. GIUFFRA: I'll rephrase the question.

4 MR. BARRON: Let me just make sure that
5 you understand my problem.

6 When you use terms like, close friend, and
7 you're asking somebody else to make a
8 characterization about that, that's the sort of thing
9 that only the people who are close friends probably
10 know whether they're close friends.

11 BY MR. GIUFFRA:

12 Q What was your understanding as to the
13 nature of the relationship between Susan Thomases and
14 the First Lady?

15 A I don't have personal knowledge of that
16 relationship. I am aware of the fact that Ms.
17 Thomases was a senior official during the '92 Clinton
18 campaign. I don't know enough to be able to describe
19 the relationship between Ms. Thomases and the First
20 Lady.

21 Q What was your understanding as to the
22 nature of the relationship between Mr. Nussbaum and

1 Ms. Thomases?

2 A Again, I don't know enough about that
3 relationship to characterize it, but I do believe
4 that they had known each other for a long time.

5 Q What did Mr. Nussbaum say to you about his
6 conversation with Ms. Thomases?

7 A I don't remember what exact words Mr.
8 Nussbaum used in his conversation with me.

9 Q Would this conversation have been before
10 the review actually occurred on the 22nd?

11 A I'm not sure. I think it may have been
12 but I'm not positive.

13 Q What do you recall was the substance of
14 the conversation between Ms. Thomases and Mr.
15 Nussbaum?

16 MR. BARRON: Let's be clear now.

17 He's not going to know the substance of
18 the conversation. He may be able to recall what Mr.
19 Nussbaum, the substance of what Mr. Nussbaum told
20 him.

21 BY MR. GIUFFRA:

22 Q What did Mr. Nussbaum tell you about the

1 conversation that he had with Ms. Thomases?

2 A Again, while I don't remember his exact
3 words, in a very brief discussion, my understanding
4 was that Mr. Nussbaum felt that Ms. Thomases and the
5 First Lady may have been concerned about anyone
6 having unfettered access to Mr. Foster's office.

7 Q Did Mr. Nussbaum indicate to you that Ms.
8 Thomases had spoken to the First Lady?

9 A No.

10 Q Did Mr. Nussbaum indicate to you the basis
11 for the statement that Ms. Thomases and the First
12 Lady had concerns about non-White House officials
13 having unfettered access to Mr. Foster's office?

14 A Again, I don't think I said that was a
15 statement. This was my understanding of what Mr.
16 Nussbaum was communicating. He did not say what the
17 basis was.

18 Q Do you recall any more about what Mr.
19 Nussbaum said to you about his conversation with Ms.
20 Thomases?

21 A I don't know that he said very much more
22 than that, or discussed any other topics.

1 Q Did Mr. Nussbaum ever tell you why Ms.
2 Thomases and the First Lady did not want non-White
3 House persons to have unfettered access to Mr.
4 Foster's office?

5 MR. BARRON: Hold on just a second. Could
6 I hear that question back?

7 (Readback.)

8 MR. BARRON: I think that mischaracterizes
9 the testimony thus far.

10 If what you want to ask him is what Mr.
11 Nussbaum told him about the conversation, then I
12 don't think that's objectionable, but if you're going
13 beyond that to ask about Mr. Neuwirth's knowledge of
14 whatever had gone on before the conversation with Mr.
15 Nussbaum, I think that's a problem. He's not going
16 to have knowledge of that.

17 MR. GIUFFRA: No. I was trying to find
18 out whether Mr. Nussbaum said anything more to Mr.
19 Neuwirth.

20 MR. BARRON: And the subject is?

21 MR. GIUFFRA: Just with regard to what Ms.
22 Thomases said as it relates to the procedure that

1 would be used to review Mr. Foster's office.

2 THE WITNESS: Again, I don't know what Ms.
3 Thomases said. And I also don't think I said that I
4 understood that Mr. Nussbaum had understood that she
5 and the First Lady did not want people in the office.

6 I think what I said was that my
7 understanding was that Mr. Nussbaum had understood
8 that Ms. Thomases and the First Lady were concerned
9 about the prospect of unfettered access, and I don't
10 know what was the basis for that concern. He didn't
11 tell me anything else about the conversation.

12 BY MR. GIUFFRA:

13 Q Do you have any understanding as to
14 whether Mr. Nussbaum regularly spoke with Susan
15 Thomases during the period January 1993 to July 1993?

16 A I don't know.

17 Q Did you ever speak to Susan Thomases
18 during the period January '93 to July 1993 in
19 connection with while you were serving as an
20 associate counsel to the President?

21 A I think I met her and may have seen her,
22 been introduced to her at a couple of social events,

1 but I don't think I ever had a substantive
2 conversation with her.

3 Q Other than the conversations that you've
4 testified to so far, do you know of any other persons
5 who had any input with regard to the decision that
6 was made as to how the process for review of
7 documents in Mr. Foster's office would proceed?

8 A No. I think I mentioned Mr. Sloan and
9 some of the conversations.

10 Q Do you know whether Mr. Nussbaum, at any
11 time after the review, ever talked to the First Lady
12 about the process that was used to review the
13 documents in Mr. Foster's office?

14 A I don't know.

15 Q Did there come a time at which Mr.
16 Nussbaum made a decision as to how the review process
17 would proceed?

18 A Yes.

19 Q When was that?

20 A I don't know whether it was at the end of
21 the meeting we had talked about earlier, or in
22 between that meeting and when the procedure began.

1 Q Do you know of any other conversations
2 other than those you've testified to here today that
3 Mr. Nussbaum had relating to the procedure that would
4 be used prior to the time when the office was
5 actually reviewed?

6 A The only other thing I can think of --
7 well, first I know, at some point, somebody in our
8 office spoke to the Secret Service about making
9 arrangements for all of the investigators to be
10 brought into the Counsel's Office.

11 I also believe that shortly before the
12 review began, Mr. Nussbaum had another conversation
13 with Mr. Margolis and perhaps Mr. Adams in his
14 office, that I may have sat in on, in which I believe
15 Mr. Margolis reiterated his view that it would be
16 better procedure for the Justice Department to play
17 the role that Mr. Nussbaum played in the review.

18 I don't know whether Mr. Nussbaum had
19 another phone conversation with Mr. Heymann at that
20 point, but he may have.

21 Q Do you know whether anyone from the
22 Department of Justice continued to express concern

1 about the procedure that Mr. Nussbaum was going to
2 use?

3 (Pause.)

4 MR. BARRON: You're asking for
5 conversations, I gather, other than the conversation
6 that Mr. Neuwirth has said may have taken place with
7 Mr. Margolis just before the review?

8 MR. GIUFFRA: We'll strike the question.

9 BY MR. GIUFFRA:

10 Q During the conversation just before the
11 review with Mr. Margolis and Mr. Adams, did Mr.
12 Margolis and Mr. Adams continue to express their
13 concern with regard to the procedure of Mr. Nussbaum
14 being the person to review the documents?

15 A During that conversation? Again, what
16 they did was express their view that their proposal
17 would be a better procedure.

18 Q Do you recall any more about what they
19 said during the course of this conversation?

20 A I don't know that anything else was
21 discussed at that point.

22 Q Were Mr. Margolis and Mr. Adams angry at

1 Mr. Nussbaum?

2 A If they were angry, they didn't express
3 that to me or in my presence.

4 Q Has Mr. Nussbaum ever indicated to you
5 that Mr. Heymann was angry with him for the procedure
6 that Mr. Nussbaum chose for reviewing the documents
7 in Mr. Foster's office?

8 A I don't think he ever indicated that Mr.
9 Heymann was angry.

10 Q What has he indicated to you was the state
11 of Mr. Heymann's mind as regards this matter?

12 A He's never tried to describe the state of
13 Mr. Heymann's mind.

14 Q Has he said anything about what Mr.
15 Heymann said to him to you, other than the things
16 you've testified to?

17 A No, he has not. And again, it's now
18 difficult for me to distinguish what I've read in
19 subsequent newspaper reports about Mr. Heymann's
20 views, and what I may have heard at the time.

21 Q Prior to the review of the documents in
22 Mr. Foster's office, do you know who had the key to

1 the office?

2 A I don't know whether there were one or two
3 keys or whether there may have even been another key
4 that was retained by the Secret Service.

5 I don't know for certain, but I think Mr.
6 Nussbaum had a key and Deb Gorham may have had a key,
7 and this was to the lock that was placed on Mr.
8 Foster's door on the 21st.

9 Do you know whether Mr. Nussbaum --
10 Strike that.

11 You've testified that Mr. Nussbaum entered
12 the office on the 21st to get a photo for the
13 President, correct?

14 A That's correct.

15 Q Other than that one entry, are you aware
16 of any other entries that Mr. Nussbaum made prior to
17 the beginning of the review on the 22nd?

18 A I don't think there were any others that
19 I'm aware of.

20 Q Do you know whether Ms. Gorham entered Mr.
21 Foster's office prior to the review on the 22nd?

22 A Not to my knowledge.

120

1 Q Do you know whether anyone from the White
2 House entered Mr. Foster's office prior to the review
3 on the 22nd?

4 A Other than Mr. Nussbaum? I had stepped in
5 the morning when Betsy Pond was there. I don't know
6 whether Mr. Sloan had ever been in the office with
7 Mr. Nussbaum. I just don't know if anybody else was.

8 Q Do you know who opened the door to Mr.
9 Foster's office when everyone entered?

10 A I don't.

11 MR. GIUFFRA: Why don't we go off the
12 record for a second.

13 (Discussion off the record.)

14 (Whereupon, at 12:35 p.m., the taking of
15 the deposition recessed, to reconvene the same day,
16 Monday, July 10, 1995, at 1:00 p.m., in the same
17 place.)
18
19
20
21
22

1 AFTERNOON SESSION

2 (1:20 p.m.)

3 Whereupon,

4 STEPHEN R. NEUWIRTH

5 was recalled as a witness herein, and having been
6 previously duly sworn, was examined and testified
7 further as follows:

8 EXAMINATION (Continued)

9 BY MR. GIUFFRA:

10 Q Mr. Neuwirth, during our morning session,
11 you mentioned a conversation that Mr. Nussbaum had
12 with Susan Thomases.

13 Are you aware of any other information
14 indicating the First Lady's views with regard to how
15 the search of Mr. Foster's offices should proceed?

16 A Again, I don't want to characterize what I
17 said as having reflected anything other than my
18 understanding, based on what I heard from Mr.
19 Nussbaum.

20 And the answer to your question is no.

21 Q Was Mr. Nussbaum's conversation with Ms.
22 Thomases a conference call with the First Lady?

122

1 A I don't know. All I was told was that Mr.
2 Nussbaum had spoken to Ms. Thomases.

3 Q Did Mr. Nussbaum ever indicate to you he'd
4 spoken to the First Lady?

5 A No.

6 Q What I'd like you to do would be to
7 prepare a drawing of the positioning of the various
8 persons in Mr. Foster's office during this review
9 process, so we can go off the record.

10 (Discussion off the record.)

11 MR. GIUFFRA: We'll mark this document as
12 Neuwirth 1.

13 MR. KRAVITZ: Can I ask you a question on
14 the record?

15 It is my request that this Exhibit be made
16 part of the transcript. That makes more sense since
17 it's not one of the documents that are held at a
18 higher level of confidentiality.

19 We also need to get copies of all the
20 drawings that have been provided in other
21 depositions.

22 MR. BARRON: While we're on the record,

1 let me just be clear.

2 What you're asking for now is for Mr.
3 Neuwirth to give you his best recollection in the
4 form of a drawing of?

5 MR. GIUFFRA: The location of various
6 persons.

7 First of all, draw Mr. Foster's office;
8 where the desk was, where the credenza was, where the
9 coffee table was, where the couch was, and then draw
10 where the various people who were present during this
11 review were seated.

12 This will also give you an opportunity to
13 state who was present.

14 Does that seem fair?

15 MR. BARRON: Do you understand that?

16 THE WITNESS: Yes.

17 MR. GIUFFRA: Go off the record.

18 (Discussion off the record.)

19 (Witness draws on paper.)

20 MR. BARRON: I think the witness has
21 finished with the diagram and may just want to offer
22 some explanation.

1 THE WITNESS: The only thing that I would
2 say is that in drawing this, I'm not sure if the
3 proportions of where things are relative to other
4 pieces of furniture in the room is exactly to scale
5 or necessarily correct. But this reflects my general
6 understanding, my general recollection of how things
7 were positioned.

8 BY MR. GIUFFRA:

9 Q My first question would be, who do you
10 recall being present during this review process?

11 A My best recollection is that Mr. Burden,
12 Mr. Nussbaum, Mr. Sloan and I were present. I should
13 just note that I was in and out at different points
14 during the review.

15 Q You mean in and out of Mr. Foster's
16 office?

17 A Foster's office.

18 Q Do you recall on how many occasions you
19 would have left the office?

20 A No.

21 Q Do you recall for what reason?

22 A I don't know whether it was because I had

1 to do something related to work, or because I had to
2 go to the bathroom, or both.

3 I believe that Mr. Margolis and Mr. Adams
4 were present from the Department of Justice.

5 I believe that there were two FBI agents,
6 two Park Police agents. I may have too many X's here
7 indicating where people were located, but the X's are
8 meant to show where people have been. I don't
9 remember exactly where people were located and I know
10 that there was at least one, and perhaps two Secret
11 Service agents present in the office during the
12 review.

13 Q Do you recall if an attorney was present
14 who represented the Foster family?

15 A Yes. And now that you've reminded me of
16 that, I can mark on this drawing where I recall he
17 was standing.

18 (Witness marks on paper.)

19 BY MR. GIUFFRA:

20 Q Do you recall the name of the Foster
21 family attorney?

22 A I don't. I believe that he was from the

1 firm of Swidler & Berlin.

2 Q Does the name Michael Spafford refresh
3 your recollection?

4 A The name Michael Spafford is familiar and
5 sounds like it's correct; I'm not certain.

6 MR. KRAVITZ: Could I look at Exhibit
7 Number 1?

8 (Handing document to counsel.)

9 (Pause.)

10 (The document referred to
11 was marked for
12 identification as Neuwirth
13 Exhibit Number 1.)

14 BY MR. GIUFFRA:

15 Q Do you recall if Mr. Margolis and Mr.
16 Adams were seated or standing?

17 A While I'm not certain, it's my best
18 recollection that they were seated, or at least Mr.
19 Margolis was seated. That he may have pulled a chair
20 into the room, or taken one of the chairs in the room
21 and sat there. But, again, I'm not certain.

22 Q Once everyone entered Mr. Foster's office,

1 Mr. Nussbaum, it appears from Neuwirth Exhibit 1, sat
2 at Mr. Foster's chair.

3 What happened next?

4 A Let me clarify that I don't believe that
5 Mr. Nussbaum sat at Mr. Foster's chair throughout the
6 process, and I also don't know if he was sitting, as
7 opposed to standing in front of it.

8 Pursuant to your request, I just tried to
9 indicate my best recollection of the general location
10 where Mr. Nussbaum placed himself most of the time
11 during the review.

12 Q Once everyone entered Mr. Foster's office,
13 what happened next?

14 A Mr. Nussbaum explained that what he was
15 going to do was show everyone in the room the
16 contents of Mr. Foster's office, describe those
17 contents, and I don't know whether Mr. Nussbaum said
18 this in the room, or whether it was understood by
19 everyone who came in, that I think that the idea
20 behind the procedure was that the agents could
21 identify what documents they would want to see as Mr.
22 Nussbaum identified where documents were located and

1 gave a description of those documents.

2 Q During this review process, did anyone in
3 the room object to the procedure outlined by Mr.
4 Nussbaum?

5 A It is my recollection that no one objected
6 during the review. As I told you earlier today, I
7 think just before the process began, Mr. Margolis had
8 reiterated his view that the procedure would have
9 been better if he had played the role Mr. Nussbaum
10 played.

11 It's not my recollection that he said that
12 in the room, but I'm not positive that he didn't say
13 that in the room as well.

14 Q Do you recall if the Park Police officers
15 said anything indicating what their view was of the
16 procedure outlined by Mr. Nussbaum?

17 A If the Park Police were concerned about
18 the procedure, they didn't express that in my
19 presence.

20 Q Do you have any understanding as to
21 whether the Park Police ever expressed any concern
22 about the procedure that Mr. Nussbaum employed to

1 review the documents in Mr. Foster's office?

2 MR. GIUFFRA: Read that question back.

3 (Readback.)

4 THE WITNESS: As I said, if they had that
5 view, it was not expressed to me. I have read
6 newspaper reports which indicate that there may have
7 been concern expressed after the review took place.

8 BY MR. GIUFFRA:

9 Q When everyone entered Mr. Foster's office,
10 do you recall whether any documents were located on
11 the coffee table?

12 A I don't think so, but I'm not certain.

13 Q Do you recall Mr. Nussbaum ever reviewing
14 any documents that were located on the coffee table?

15 A I don't think he did.

16 Q What was the positioning of papers on Mr.
17 Foster's desk at the commencement of the review?

18 A I'm not sure.

19 Q Do you recall approximately the amount of
20 papers filed that were on Mr. Foster's desk at the
21 commencement of the review?

22 A No.

1 Q Do you recall whether there were any items
2 on Mr. Foster's desk other than papers or files at
3 the commencement of the review?

4 A There may have been in-boxes, and there
5 may have been items like penholders and tape, but I'm
6 not positive. I have no clear recollection of what
7 the top of his desk looked like at the start.

8 Q Were the law enforcement officials -- by
9 that, I include Mr. Margolis and Mr. Adams --
10 positioned in such a way that they could read
11 documents located on the top of Mr. Foster's desk?

12 MR. KRAVITZ: You mean does he know?

13 BY MR. GIUFFRA:

14 Q Was it your impression that they were in a
15 position where they could review such documents?

16 A I don't know because I didn't look from an
17 angle where they were located.

18 Q Was any attempt made to position the law
19 enforcement officials in such a way that they could
20 not review documents that were on Mr. Foster's desk?

21 A I don't recall attention being paid to
22 that. I think that the procedure was meant to let

1 them watch Mr. Nussbaum look at the contents of the
2 office and to let Mr. Nussbaum show the agents where
3 things were located and describe what they were.

4 Q But they were not permitted to review the
5 contents of Mr. Foster's office?

6 MR. BARRON: I've got to object to that.

7 MR. GIUFFRA: I'll rephrase the question.

8 BY MR. GIUFFRA:

9 Q At any time during the course of the
10 review, did Mr. Nussbaum permit law enforcement
11 officers or officials to review the contents of Mr.
12 Foster's office?

13 MR. BARRON: By review, you mean read?

14 MR. GIUFFRA: Yes.

15 THE WITNESS: During the procedure, there
16 may have been certain documents that either Mr.
17 Margolis or other agents looked at, at least to
18 confirm that they were, for example, personal
19 documents of Mr. Foster. But I am not certain at
20 this point whether that happened until -- my
21 recollection is a little unclear.

22 I do know that what Mr. Nussbaum did was

1 to let the agents in the room identify what they
2 wanted to see. I know that he made a pile of
3 documents that they had wanted to see, and I think
4 arrangements were subsequently made to let the agents
5 see the documents they had requested to see.

6 Q Do you recall the documents or files that
7 Mr. Nussbaum reviewed first in the course of the
8 review?

9 A I don't.

10 Q Do you recall whether he opened the
11 drawers of Mr. Foster's desk and removed any
12 documents?

13 A During the procedure or at the beginning?

14 Q During the procedure.

15 A I think that he did review the contents of
16 the drawers in Mr. Foster's desk.

17 Q Did he remove the contents of the drawers
18 from Mr. Foster's desk? Or did he return the
19 documents to the drawers

20 A At different points in the procedure, Mr.
21 Nussbaum held up the contents of either files or
22 other materials that he located. I don't know

1 whether he did that for each drawer that he opened,
2 and I don't know whether the desk drawers were among
3 the drawers where he did that.

4 I do know that when Mr. Nussbaum described
5 something that was either a personal item of Mr.
6 Foster's or something that one of the agents said
7 that he wanted to look at, those items were taken by
8 Mr. Nussbaum and put into one of two piles on top of
9 the desk.

10 Q You mentioned there were piles that Mr.
11 Nussbaum created on the top of the desk.

12 Could you describe what documents were
13 placed in, were there two piles?

14 A I recall two piles. I don't know how many
15 there were, but I recall two. One was, as I said,
16 for personal items, and one was for items that the
17 agents had indicated an interest in reviewing.

18 Q Was there a pile for White House
19 documents?

20 A My best recollection is that White House
21 documents were left in the drawers where they were
22 located, or on top of the counters where they were

1 located.

2 Q With what level of specificity did Mr.
3 Nussbaum describe documents during the course of this
4 review process?

5 A It varied.

6 Q Could you state for the record what you
7 recall about the level of specificity with which you
8 reviewed documents?

9 A I think that Mr. Nussbaum tried to give as
10 much of a description as he could without creating a
11 the type of privilege concerns that had been
12 considered earlier.

13 I think in some cases he just described
14 something as a White House working file. In other
15 cases, he would identify the subject matter of a file
16 whether it was a White House file or something that
17 involved personal materials like, say, for example, a
18 checkbook of Mr. Foster's, although I'm not
19 suggesting that a checkbook was necessarily there.

20 And that was basically how this proceeded.

21 Q Was it your understanding that Mr.
22 Nussbaum identified, in some fashion, every document

1 that was contained in Mr. Foster's office?

2 A While, as I told you, I was in and out, my
3 impression at the end of the process was that Mr.
4 Nussbaum had looked in every location in the office
5 where materials could be located and that he had at
6 least given some description of what was within each
7 drawer and each other location.

8 This was done in the presence of all of
9 the investigators.

10 Q During the course of this review, did
11 anyone on the White House Staff take notes?

12 A I believe Mr. Sloan took notes.

13 Q Did Mr. Nussbaum ask Mr. Sloan to take
14 notes?

15 A I'm not sure.

16 Q Were there documents located on either
17 what you've described here as the wooden file drawer?
18 This would be on the left hand side of the office
19 looking at the desk.

20 A We can say, if you're in the desk chair
21 facing out, this would have been on the right side of
22 the office.

1 Q Were there any documents located on the
2 top of this file drawer?

3 A As I wrote here, I said it was either a
4 file drawer or a counter. I'm not positive. But I
5 think that there were drawers here. I think there
6 were files in the drawers and that there may have
7 also been at least documents, if not formal files, on
8 top of whatever this piece of furniture was.

9 Q It would be your recollection that it
10 would appear that Mr. Nussbaum was going through each
11 set of files contained in this particular cabinet?

12 A That is correct.

13 Q Then to the left of the desk, looking out,
14 there was a bookcase. Is that correct?

15 A I don't know if it was a bookcase. I
16 think there were more of these file drawers that also
17 had counter space on top.

18 And beyond that, I believe there was a
19 floor-to-ceiling bookshelf. There may also have been
20 some additional bookshelves on the top of the
21 furniture to the left of the desk facing out. I'm
22 not positive.

1 Q Do you recall whether Mr. Nussbaum
2 examined any files or documents contained in the
3 cabinets to the left of where he was seated?

4 A As I told you, I think that Mr. Nussbaum
5 looked everywhere in the office where documents could
6 be located. As I said, while I was in and out of the
7 office, the nature of the process was such that that
8 was my understanding at the end.

9 Q Do you recall whether there were any
10 binders in the bookshelf in Mr. Foster's office?

11 A I think that there may have been.

12 Q Do you recall whether Mr. Nussbaum looked
13 through these binders and described the contents of
14 the binders?

15 A I don't know whether he looked through the
16 binders and described the contents in detail, or
17 whether in looking at them, or looking in them, he
18 was able to describe them, and was working through
19 this.

20 Q Did you have any private discussions with
21 Mr. Nussbaum during the course of this review
22 process?

1 (Pause.)

2 A While it's possible that, at one point or
3 another, I may have whispered something to Mr.
4 Nussbaum or he may have answered a question, I don't
5 recall necessarily doing that, and certainly don't
6 recall the content of anything that was said to Mr.
7 Nussbaum.

8 Q Do you know whether Mr. Sloan had any such
9 conversations with Mr. Nussbaum?

10 A I don't know.

11 Q Do you recall whether Mr. Burden had any
12 such conversations?

13 A I'm not sure.

14 Q Did you read any of the documents in Mr.
15 Foster's office during the course of this review?

16 A I don't believe so.

17 Q Do you recall discussing whether certain
18 documents were privileged or not with Mr. Nussbaum
19 during the course of this review?

20 A I don't. I think that Mr. Nussbaum had, I
21 think that Mr. Nussbaum made those determinations as
22 he looked at the files.

1 Q Do you recall any discussion between
2 either Mr. Margolis or Mr. Adams and Mr. Nussbaum
3 with regard to whether documents should be treated as
4 privileged?

5 A I don't recall conversations about whether
6 documents should be treated as privileged.

7 I do think, as I said earlier, there may
8 have been some discussion about the items that were
9 personal and those, as I said, may have been looked
10 at at one point by Mr. Margolis, but I'm not sure.

11 Q Do you recall any discussion of a
12 newspaper article, the question being raised as to
13 whether the newspaper article could be treated as
14 privileged?

15 A No. The only newspaper article I recall
16 is one that was written after Vince came to
17 Washington. I think it was a profile in one of the
18 Arkansas newspapers.

19 Q Do you recall Mr. Nussbaum indicating that
20 any of the documents contained in Mr. Foster's office
21 related to the President and First Lady's personal
22 finances?

1 A I don't recall Mr. Nussbaum saying that.

2 Q Do you recall any discussion of Whitewater
3 Development Corporation during the course of this
4 review process?

5 A No.

6 Q Do you know if any computer disks in Mr.
7 Foster's office were reviewed?

8 A With the understanding of the agents who
9 were present, they were not reviewed, and when I say
10 they were not reviewed, I don't know that there were
11 any computer disks, but at the end of the review, a
12 request was made by one or more of the agents present
13 for the White House to review Mr. Foster's computer
14 files.

15 Q Did the White House ever review Mr.
16 Foster's computer files, so far as you know?

17 A I reviewed Mr. Foster's computer files on
18 the Monday after his death in connection with the
19 inventory I was asked to make of the contents of his
20 office.

21 Q At the conclusion of the review of
22 documents in Mr. Foster's office, do you recall how

1 large the stacks were of personal documents and
2 documents the agents wanted?

3 A No.

4 Q Do you recall anything about the documents
5 that the agents requested to see?

6 A I don't know whether they had requested
7 phone logs at that time, or subsequently. Beyond
8 that, I don't remember the specifics of what they
9 requested except that there was a pile of documents
10 that they had asked for.

11 Q Do you recall any discussion of a possible
12 suicide note during the course of this review
13 process?

14 A I was aware that that was one of the
15 things that the Park Police were trying to determine
16 existed or not.

17 Q Do you recall other types of documents
18 that the Park Police or Department of Justice
19 officials were trying to determine existed?

20 A I think generally what they were looking
21 for was a suicide note or other document that would
22 explain Mr. Foster's death.

1 Q They were looking for evidence of his
2 state of mind prior to his death?

3 A I think what I said was that they were
4 looking for a suicide note or other document that
5 would indicate why he had died, either an extortion
6 note, or some other suicide note.

7 I don't know what else they may have been
8 interested in.

9 Q Do you recall a discussion on the
10 extortion note during the period leading up to the
11 review process?

12 MR. BARRON: You're asking about an
13 extortion note as a category of documents or possible
14 documents, as opposed to a particular document?

15 MR. GIUFFRA: Exactly.

16 THE WITNESS: I don't know whether the
17 words, extortion note, per se, were used. But that
18 was the type of document that it was my understanding
19 that the investigators wanted to determine whether or
20 not it existed.

21 BY MR. GIUFFRA:

22 Q Do you recall if there were any documents

1 that the investigators requested that Mr. Nussbaum
2 did not put in the pile that he had designated for
3 law enforcement documents?

4 A My understanding was that every document
5 that they investigators requested was put into that
6 pile.

7 Q Did there come a time during the course of
8 this review when Mr. Sloan made a statement to an FBI
9 agent, who had stood up during the course of the
10 review?

11 A Mr. Sloan made a statement to an FBI agent
12 in which Mr. Sloan asked the agent whether he was
13 trying to read documents that Mr. Nussbaum was laying
14 out on Mr. Foster's desk.

15 I don't know whether the agent had just
16 stood up or not at that time.

17 Q What did Mr. Sloan say to the agent?

18 A I don't remember his exact words, but the
19 content of what he said was what I just described.

20 Q Do you recall how many briefcases Mr.
21 Foster had?

22 A I don't know how many briefcases Mr.

1 Foster had.

2 Q Do you recall how many briefcases were in
3 his office on July 22nd, when you conducted the
4 review?

5 A I was only aware of one.

6 Q Could you describe that briefcase for the
7 record?

8 A It was a leather briefbag, is the term I
9 would use, that expanded slightly. I don't know
10 whether it had a zipper on top but it had handles on
11 top that allowed you to carry it.

12 Q Was this a soft leather?

13 A It was not hard like a briefcase, it was
14 more like, as I said, a leather briefbag, and it was
15 not much larger than the length of a legal pad, maybe
16 a little bit longer.

17 Q At the outset of the review process, where
18 was this briefcase located?

19 A I believe it was behind Mr. Foster's desk
20 under the window, leaning against the wall under the
21 window.

22 Q What was the color of this briefcase?

1 A I think it was a brownish color.

2 Q Did there come a time during the course of
3 the review when Mr. Nussbaum reviewed the contents of
4 this briefcase?

5 A I know that at the start of the review, he
6 advised the people in the room that there was a
7 briefbag behind Mr. Foster's desk, because I don't
8 know that the agents could see it from where they
9 were standing or sitting.

10 And so Mr. Nussbaum advised them that it
11 was there. I'm not certain whether I was in the room
12 at the time he reviewed the contents of the briefbag,
13 but it was certainly my understanding that he
14 reviewed the contents of the briefbag, and I may have
15 been there, I'm just not certain.

16 Q Do you recall seeing him review the
17 contents of the briefbag?

18 A As I said, I'm not sure. The briefbag did
19 not stand out in a way that made it more significant
20 than any other items that he looked at during the
21 review, so it's hard for me to be sure whether
22 anything he did related to the briefbag or some other

1 location in the office.

2 Q Do you remember Mr. Nussbaum ever
3 indicating that the briefbag was empty during the
4 course of the review?

5 A I don't have a recollection of him saying
6 that it was empty. But, again, I was not necessarily
7 present at every moment when he would have talked
8 about the bag.

9 Q Did you ever look in the briefcase on July
10 22nd, 1993?

11 A No.

12 Q Do you know if anyone looked in the
13 briefcase on July 22nd, 1993?

14 A Does that include Mr. Nussbaum?

15 Q Including Mr. Nussbaum.

16 A Other than Mr. Nussbaum, I don't know.

17 In the case of Mr. Nussbaum, I don't want
18 to characterize what he did or didn't do with the
19 briefbag because I don't know whether I was there.
20 And if I was there, I just don't remember the
21 details.

22 Q At any time on July 22nd, do you know if

1 Mr. Sloan said to Mr. Nussbaum that there were scraps
2 of paper in the bottom of the briefcase?

3 A I did not hear Mr. Sloan say that.

4 Q Did Mr. Sloan ever indicate to you in any
5 way that he said something along those lines to Mr.
6 Nussbaum?

7 A He did not indicate that to me.

8 Q Have you ever spoken to Mr. Burden about
9 this briefcase?

10 A I don't think so.

11 Well, that's not correct.

12 Mr. Burden was one of the people whom Mr.
13 Nussbaum and I spoke to after we located the note the
14 following Monday, and we told him that we had found
15 it in the briefbag. So to that extent, yes.

16 Or we told him that I had found it in the
17 briefbag.

18 (Pause.)

19 Q Do you know if Mr. Stafford has ever said
20 anything to anyone at the White House about this
21 briefcase?

22 A I don't know.

1 Q Do you have any further testimony that
2 would be relevant to the Committee with regard to
3 this briefcase other than your finding the note as it
4 relates to the 22nd?

5 A I don't know what the Committee considers
6 relevant.

7 Q Never mind.

8 Did Mr. Nussbaum review trash during the
9 course of this review?

10 A I'm not sure.

11 Q Do you recall Mr. Sloan bringing a bag of
12 trash in from outside Mr. Foster's office?

13 A I don't recall that. That doesn't mean it
14 didn't happen; I just don't know.

15 Q Do you recall any discussion of a burn bag
16 during the course of this review?

17 A I'm not sure whether a burn bag was
18 discussed.

19 Q Do you know Sylvia Matthews?

20 A Yes, I do.

21 Q Have you ever discussed anything having to
22 do with documents in Mr. Foster's office with Sylvia

1 Matthews?

2 A I have not discussed anything about the
3 documents. I was aware at one point that she had
4 been asked to be interviewed by one of the
5 investigators at some point after July of 1993.

6 Q Do you recall the approximate time in
7 which this review of the documents in Mr. Foster's
8 office commenced?

9 A It was either 1:00 or 2:00 o'clock, or
10 sometime around that time, but I'm not sure.

11 Q What would be your best estimate of the
12 amount of time that the review took?

13 A I would just be guessing at this point. I
14 just don't remember.

15 Q Was it more than an hour, more than two
16 hours?

17 A I really don't remember.

18 Q Did it appear to take the better part of
19 the afternoon, or less than the better part of the
20 afternoon?

21 A It did not take the whole afternoon.

22 Q After Mr. Nussbaum concluded his review,

150

1 did Mr. Margolis say anything to Mr. Nussbaum about
2 not removing documents contained in Mr. Foster's
3 office?

4 A I did not hear Mr. Margolis say that.

5 Q Do you recall Mr. Nussbaum saying to
6 anyone that Mr. Foster's office could not remain
7 secure any longer?

8 A No.

9 Q After the review was completed, did a
10 Secret Service agent continue to be posted at the
11 door to Mr. Foster's office?

12 A I don't know that a Secret Service agent
13 was posed on Thursday. My best recollection is that
14 when the initial request was made to seal Mr.
15 Foster's office on the morning of the 21st, a Secret
16 Service agent was posted because no lock had yet been
17 put on the door.

18 When a lock was put on the door, either
19 late Wednesday afternoon or early Wednesday evening,
20 and it may be mid-afternoon, I don't believe an agent
21 was posted at the door any longer. I may be wrong,
22 but that's my best recollection.

1 Q After the review process was completed,
2 did Mr. Nussbaum or yourself --

3 Strike that.

4 After the review process was completed,
5 did anyone at the White House have any further
6 discussions with the law enforcement officials on
7 July 22nd with regard to the contents of Mr. Foster's
8 office?

9 A I don't know.

10 Q Were any decisions made with regard to the
11 handling of Mr. Foster's personal effects on July
12 22nd?

13 A Yes.

14 Q What actions were taken?

15 A At the end of the review, in the presence
16 of what I would believe were all of the law
17 enforcement officials who were present during the
18 review, and with their agreement, a decision was made
19 to let the attorney for the Foster family take the
20 personal items that had been identified during the
21 review.

22 Q What were some of the personal items that

1 had been identified, as best you recall?

2 A I really just don't remember what they
3 were. They may have been bank statements or other
4 personal items of that nature.

5 Q Do you recall if the briefcase was deemed
6 to be a personal item of Mr. Foster?

7 A I don't think that it was. I don't think
8 that it was one of the items that was given to the
9 Foster family attorney.

10 Not only do I not think that, I know that.

11 Q Do you know why the briefcase wasn't given
12 to the Foster family attorney?

13 A No.

14 Q After the law enforcement officials left
15 Mr. Foster's office, did there come a time on the
16 22nd when Mr. Nussbaum again reviewed the contents of
17 Mr. Foster's office?

18 A I don't know if Mr. Nussbaum ever reviewed
19 the contents of the office. He asked me to review
20 those contents. I think he asked me at some point
21 after the review on Thursday.

22 I ultimately did it, pursuant to Mr.

1 Nussbaum's instruction on Monday, because the funeral
2 of Mr. Foster was the next day, and Mr. Nussbaum said
3 that it would be okay to take the weekend off.

4 Q Do you recall whether Mr. Nussbaum
5 returned to Mr. Foster's office on July 22nd at any
6 time?

7 A Yes.

8 Q When did he return to Mr. Foster's office
9 on July 22nd?

10 A Well, I told you I recalled whether he
11 did, and I saw him in the office at one or two points
12 in the afternoon of the 22nd after the review was
13 completed.

14 Q Do you recall the approximate time?

15 A I don't. I think it was before the
16 evening, but I don't know how late in the afternoon
17 it was.

18 Q What was Mr. Nussbaum doing in Mr.
19 Foster's office on these occasions?

20 Was it one occasion or two occasions?

21 A Two when I saw him.

22 I don't know what he was doing, but on one

1 occasion I saw him with Mr. Sloan and on a second
2 occasion, I saw him talking to Maggie Williams.

3 Q Inside of Mr. Foster's office?

4 A That's correct.

5 Q On either occasion, did it appear that Mr.
6 Nussbaum was reviewing any documents?

7 A I believe that when I saw Mr. Nussbaum
8 with Mr. Sloan they were looking at documents.

9 Q Do you recall --

10 Strike that.

11 Were they looking at documents on top of
12 Mr. Foster's desk, or were they looking through
13 documents that were in the cabinets?

14 A I'm not sure.

15 To the extent I saw them with documents,
16 I'm not sure where they were from, and I don't really
17 recall where they were in the office.

18 And I should just say that, while this is
19 my recollection, it's not a certain recollection.
20 This was a long time ago.

21 Q Do you know if there were any boxes in Mr.
22 Foster's office later in the afternoon when Mr.

1 Nussbaum was reviewing documents or looking at
2 documents?

3 A I didn't see any boxes.

4 Q Have you ever asked Mr. Nussbaum what he
5 was doing in Mr. Foster's office on the afternoon of
6 July 22nd?

7 A I don't think that we ever discussed that
8 after the 22nd. On the day of the 22nd, I think I
9 may have understood that Mr. Nussbaum was beginning
10 the process of taking stock of what was in the
11 office, because there were working files that I
12 understood Mr. Nussbaum wanted to give to other
13 lawyers in the office so they could pick up work that
14 Mr. Foster had been handling.

15 That was why I understood he wanted me to
16 do the inventory of the office the following Monday.

17 Q Do you know why Ms. Williams was in Mr.
18 Foster's office on the afternoon of July 22nd?

19 A When I saw her there, I did not know why
20 she was there.

21 Q Do you have any understanding as to why
22 Ms. Williams was in Mr. Foster's office on the

1 afternoon of July 22nd, 1993?

2 A I don't have any personal knowledge of why
3 she was there.

4 Q Other than from press accounts, do you
5 have any understanding as to why Ms. Williams was
6 present?

7 A I think that after Thursday, the 22nd, I
8 became aware that there might be files delivered to
9 Williams & Connolly, but I don't have any personal
10 knowledge of whether that was something that was
11 discussed by Ms. Williams and Mr. Nussbaum that day.

12 Q You never discussed whether there were
13 personal files relating to the President and First
14 Lady in Mr. Foster's office with Ms. Williams?

15 A I have not.

16 Q Do you recall speaking with Ms. Williams
17 on July 22nd?

18 A It's possible that I spoke to her, because
19 I spoke to her a lot, but I don't know whether I
20 spoke to her that day.

21 Q Do you recall any conversations that you
22 had with Ms. Williams bearing in any way on the

1 documents that were contained in Mr. Foster's office?

2 A I do not recall any conversations with her
3 about documents in Mr. Foster's office.

4 Q Do you have any general recollection of
5 impression of any such conversations?

6 A It is possible that I spoke to Ms.
7 Williams that week or on that day. I don't know the
8 content of the conversations where I did speak to
9 her.

10 Q What were your primary --

11 Strike that.

12 Do you recall what matters you worked on
13 on July 22nd, 1993?

14 MR. BARRON: On that day?

15 MR. GIUFFRA: Yes.

16 THE WITNESS: I think the day was occupied
17 almost fully, at least up until the end of the
18 review, by matters relating to the review and other
19 follow-up on Mr. Foster's death.

20 I don't know whether, after the review, I
21 worked on other matters, but I think I did go back to
22 my office and may have done some work on some of the

1 other matters I was handling.

2 BY MR. GIUFFRA:

3 Q Do you recall approximately what time you
4 might have started working on other matters besides
5 those relating to Mr. Foster's death on July 22nd?

6 A I'm not sure whether I worked on other
7 matters, and since I'm not sure what time the review
8 would have been, I think it would have been, as a
9 general matter, in the later part of the afternoon.

10 Q Do you recall taking any actions with
11 regard to documents contained in Mr. Foster's office
12 after the review was completed?

13 A Well, the following Monday I did the
14 inventory.

15 Q Anything on the 22nd?

16 A I don't believe I did anything else with
17 respect to documents in the office.

18 Q I'd like to show you a document that bears
19 Bates number Z-953. This is a document we received
20 from the White House.

21 (Handing document to witness.)

22 MR. KRAVITZ: What number is that, Bob?

1 MR. GIUFFRA: 953.

2 BY MR. GIUFFRA:

3 Q This document appears to be a telephone
4 message slip saying "To Maggie from Steve Neuwirth"
5 dated July 22nd, 1993, time 3:25 p.m.

6 Do you have any recollection of calling
7 Ms. Williams?

8 A I really don't have a recollection of
9 calling her, but as I said earlier, Maggie was one of
10 the people I spoke to a lot. And as I said, it's
11 possible I spoke to her that day, or other occasions.
12 I just don't remember the content of any particular
13 conversation.

14 Q Is it possible that you might have spoken
15 to Ms. Williams about documents contained in Mr.
16 Foster's office on July 22nd, 1993?

17 A I really don't think so.

18 (Pause.)

19 Q Do you know if any documents contained in
20 Mr. Foster's office were removed on July 22nd, 1993?

21 A I do not know.

22 Q Do you have any general understanding as

160

1 to whether such documents were removed on July 22nd,
2 1993?

3 A I really don't know.

4 Q Other than from press accounts, do you
5 know whether Ms. Williams removed a box of documents
6 from Mr. Foster's office and brought it to the White
7 House residence on July 22nd, 1993?

8 A With respect to the details of your
9 question, I don't know. I learned it from press
10 accounts.

11 Q Do you have any general understanding that
12 Ms. Williams removed the box of documents on the
13 22nd?

14 A I have no knowledge of whether she removed
15 a box of documents on the 22nd.

16 *Q You've never discussed whether she did,
17 whether she removed the box of documents on the 22nd
18 with Mr. Nussbaum.

19 A No.

20 Q You never discussed it with Ms. Williams?

21 A No.

22 Q Have you ever spoken to Mr. Castleton

1 about any role he might have played in the removal
2 any documents from Mr. Foster's office?

3 A No.

4 Q Do you have any knowledge of whether the
5 First Lady wanted to review any documents contained
6 in Mr. Foster's office?

7 A I don't know.

8 Q Do you have any knowledge as to whether
9 the First Lady --

10 Strike that.

11 Do you know if Mr. Nussbaum attempted to
12 contact Carolyn Huber on the 22nd of July?

13 A I do not know.

14 Q I apologize if this question is
15 repetitive. I just want to be clear on this.

16 Other than from press accounts, do you
17 have any knowledge of the transportation of the box
18 of documents from Mr. Foster's office to a closet in
19 the White House?

20 A Other than from press accounts, I have no
21 knowledge of the transfer of a box of documents from
22 Mr. Foster's office to a closet in the White House.

1 Q Do you have any knowledge of the
2 transportation of a box of documents contained in Mr.
3 Foster's office to the law firm of Williams &
4 Connolly?

5 A Yes.

6 Q Could you describe what knowledge you have
7 with regard to the transportation of documents from
8 Mr. Foster's office to the law firm of Williams &
9 Connolly?

10 A Putting aside what I have read in the
11 newspaper reports, on the plane ride back from Mr.
12 Foster's funeral on Air Force One, Bob Barnett, an
13 attorney at Williams & Connolly, and in a brief
14 conversation indicated that Williams & Connolly would
15 be receiving some documents that I understood to be
16 from Mr. Foster's office, although we didn't discuss
17 that in any great detail. It was, as I said, a brief
18 conversation.

19 Q Did Mr. Barnett indicate that he had
20 spoken to anyone with regard to the transportation of
21 such documents to Williams & Connolly?

22 MR. BARRON: Just so we're clear, you're

1 using the word, transportation. I take it you're not
2 talking about how the documents got from one place to
3 another, but the fact that documents were expected to
4 go from one place to another.

5 Is that correct?

6 MR. GIUFFRA: That's correct.

7 THE WITNESS: I think he had indicated
8 that he had spoken to Maggie Williams.

9 BY MR. GIUFFRA:

10 Q Did he indicate anything more about what
11 Maggie Williams had told him about the fact that
12 documents needed to be transported from Mr. Foster's
13 office to Williams & Connolly?

14 A I don't think I said that Maggie had said
15 the documents needed to be transported, but what Bob
16 Barnett told me was that Williams & Connolly would be
17 receiving documents, and I told you that I understood
18 he had spoken to Maggie Williams about that.

19 Q Do you know whether he spoke to the First
20 Lady about documents contained in Mr. Foster's
21 office?

22 A I do not know.

1 Q Between July 22nd and July 26th, did you
2 ever enter Mr. Foster's office until the morning of
3 the 26th?

4 A On July 22nd I was there for the review.

5 Q Between the review and the time you next
6 entered the office on the 26th in the morning?

7 A I know I was in the Counsel's Office
8 suite. I don't think I ever went back into Mr.
9 Foster's office although it's possible that I might
10 have said something to Bernie if he was in there. I
11 just don't know, at this point, whether I did or not.

12 On Friday, I left very early in the
13 morning to go to Little Rock for Vince Foster's
14 funeral, came back after midnight or close to
15 midnight, went home. I did not come to the office on
16 either Saturday or Sunday of that week.

17 Q Other than with regard to Mr. Nussbaum
18 being in the office on the 22nd, from that time until
19 the time when you entered the office, Foster's office
20 on the 26th, do you know whether anyone entered Mr.
21 Foster's office?

22 A Apart from the two instances where I

1 observed that?

2 Q Yes.

3 A I don't know.

4 MR. GIUFFRA: Do you want to take a break
5 right here?

6 (Recess.)

7 BY MR. GIUFFRA:

8 Q Mr. Neuwirth, directing your attention to
9 July 26th, did there come a time when you entered Mr.
10 Foster's office and reviewed certain documents
11 contained therein?

12 A Yes.

13 Q Could you please describe for the record
14 the circumstances under which you reviewed these
15 documents?

16 A Mr. Nussbaum, I believe the previous
17 Thursday, had asked me to make an inventory of the
18 files in Mr. Foster's office.

19 It was my understanding that Mr. Nussbaum
20 wanted to know what working files needed to be
21 distributed to other attorneys in the office to
22 continue the work.

1 Q Did anyone assist you in connection with
2 the preparation of this inventory?

3 A The only assistance I received was that
4 Deb Gorham assisted me in looking at Mr. Foster's
5 computer files in terms of answering a couple of
6 questions, and at one point, either Deb Gorham or
7 Linda Tripp may have obtained a box for me because
8 there were some additional personal items of Mr.
9 Foster, like some photographs of Mr. Foster and his
10 daughter with the President, that I understood,
11 consistent with the procedure that had been agreed to
12 on that prior Thursday, should have been delivered to
13 the attorneys for the Foster family.

14 Q When did you start preparing this
15 inventory?

16 A I think it was sometime in the morning,
17 9:30, 10:00 o'clock, but it may have been a little
18 later or a little earlier. I'm not certain.

19 Q Was the door to Mr. Foster's office locked
20 when you entered the office?

21 A Well, I'm not certain. My best
22 recollection is that either Mr. Nussbaum or Ms.

1 Gorham opened the door for me, unlocked it.

2 Q Let me show you a document which bears
3 Bates numbers Z1 to Z6. This is a document which we
4 received from the White House.

5 (Handing document to witness.)

6 BY MR. GIUFFRA:

7 Q What is this document?

8 A This appears to be a copy of the inventory
9 that I made on Monday, the 26th, in Mr. Foster's
10 office. I don't know because I don't have the
11 original in front of me, but this looks to be
12 complete.

13 Q In preparing this inventory, how complete
14 were you attempting to be?

15 A I was attempting to identify the name of
16 each file in the office.

17 Q So in preparing the inventory, you would
18 look at the file and see if there was a name on the
19 file, and then list it on the sheet of paper?

20 A That's correct.

21 (Pause.)

22 Q During the course of this inventory, do

1 you recall identifying any files that were
2 denominated Whitewater Development Corporation?

3 A No.

4 Q Let me show you another document. This
5 bears the Bates numbers Z632 through 633.

6 (Handing document to witness.)

7 BY MR. GIUFFRA:

8 Q Document bearing 633 says, six pages
9 redacted.

10 Do you know what this document is?

11 A No.

12 Q Was any attempt ever made to type the
13 document bearing Bates numbers Z1 to Z6?

14 A I am not aware of any such effort.

15 MR. BARRON: Off the record for a moment.

16 (Discussion off the record.)

17 MR. GIUFFRA: Back on the record.

18 BY MR. GIUFFRA:

19 Q So for example, in the document bearing
20 Z1, Item Number 14 says Webster Hubbell. Would there
21 have been a file on Webster Hubbell in Mr. Foster's
22 office?

1 A That was the name that would have been
2 indicated on the file folder.

3 Q Also on page Z1, it says Ethics One Year
4 Recusal Rule, and in parentheses, it says "empty."

5 Does that indicate that the file was empty
6 of any documents?

7 A That's correct.

8 Q So that throughout this document, where
9 you have "empty" in parentheses, that means the file
10 was empty?

11 A That's correct.

12 Q On page Z2, it says here 35 personnel file
13 list. Do you have any recollection as to what that
14 refers to?

15 A That would have been the name of the
16 folder. I don't know what was in the folder.

17 Q On page Z3 -- oh, one other thing. In
18 preparing this document, you went through the
19 documents in Mr. Foster's desk so that, for example,
20 on page Z1 it says working file desk, right middle
21 drawer, so these would be the documents that were
22 found in the right middle drawer of the desk?

1 A Yes.

2 I think throughout this document, I tried
3 to indicate where in the office the files were
4 located.

5 Q On page Z3, it says VWF Cabinet upper
6 right drawer.

7 What does that refer to?

8 A I assume it was one of the file cabinets
9 to the left or the right of his desk, and there may
10 have only been one. Because, as I indicated on the
11 chart, I don't remember whether these pieces of
12 furniture to the left and right of the desk were in
13 the counters or the file drawers. There may have
14 been just one between the two locations.

15 Q On page Z3, it says Sean Hadden.

16 Do you know who Sean Hadden is?

17 A Yes.

18 Q Who is Sean Hadden?

19 A I believe that Sean Hadden is one of the
20 people on the staff at the White House residence who
21 was in litigation with the White House.

22 Q Do you know what that litigation involved?

1 A I believe it involved a purported equal
2 employment opportunity claim.

3 Q Was Mr. Hadden bringing suit against
4 anyone at the White House?

5 A I don't know the details of the suit. I
6 don't remember the details of the suit. I may have
7 known at one point.

8 Q Let's just go back to page Z1.

9 The first item, Armstrong, do you know
10 what that word refers to?

11 A I'm not certain. It was a major
12 litigation pending at that time generally referred to
13 as the Armstrong Case in Federal Court.

14 Q Michael Beatty?

15 A I don't know.

16 Q On page Z2, Alexis Herman?

17 A Alexis Herman is the Assistant to the
18 President for Public Liaison at the White House.

19 Q It says on page Z3, Bush file index. Do
20 you know what that one refers to?

21 A I don't know unless it would have been
22 files that the Bush White House Counsel's Office

1 would have passed on. But again, I'm not sure.

2 Q On page Z4, it says computer cabinet,
3 upper. On the document that bears the notation,
4 Neuwirth 1, you have something noted as computer to
5 the left of Mr. Foster's desk looking out from the
6 chair.

7 Do you believe that the documents listed
8 on page Z4 were contained in this cabinet?

9 A What this appears to refer to is a file
10 cabinet that would have been on the side of the desk
11 where the computer was located. It may have been
12 right under the computer or right next to it, as I
13 indicated on the drawing I made.

14 Q Do you have any knowledge as to what this
15 Item 9, Clinton-Health Issues, Ickes, Personal and
16 Confidential?

17 A I don't know.

18 Q On page Z5, it says Personal Clinton
19 Legal. Do you know what that refers to?

20 A No, I do not.

21 Q You weren't aware that these files
22 contained on page Z4 and Z5, denominated by 1 through

1 18, contained under Computer Cabinet Upper, were
2 maintained in Mr. Foster's office?

3 A I don't understand the question.

4 Q Let me rephrase that question.

5 (Pause.)

6 After you prepared this inventory, did you
7 ever discuss with anyone at the White House the fact
8 that there was a file contained in Mr. Foster's
9 office denominated "Personal Clinton Legal"?

10 A No, I did not.

11 Q After you completed this inventory, did
12 you discuss with anyone at the White House the fact
13 that any of these files were contained in Mr.
14 Foster's office?

15 That would be the files, essentially the
16 whole document?

17 A I made, at the time of the first inquiries
18 about this matter by the Special Counsel on the
19 Request for Documents, I showed this document to Joel
20 Klein, who was then the Deputy White House Counsel,
21 to show him what it looked like, because he had not
22 been at the White House at the time it had been

1 created, and it's possible that I may have shown it
2 to other attorneys at the White House.

3 Q Other than with your own counsel, have you
4 ever discussed with anyone the fact that files
5 denominated "Personal Clinton Legal," were contained
6 in Mr. Foster's office?

7 MR. BARRON: Can we go off the record for
8 a moment?

9 MR. GIUFFRA: Sure.

10 (Discussion off the record.)

11 MR. BARRON: Your question is directed at
12 conversations in the normal course of business, as
13 opposed to discussions with other people
14 investigating this matter, is that right?

15 MR. GIUFFRA: Actually, I'd like to have
16 on the record whether he's discussed it with people
17 investigating this matter. I'm not going to get into
18 the substance of those conversations but the fact of
19 them is something that has been fair game in other
20 depositions.

21 MR. BARRON: Okay. So if he answers this
22 question other than people who are investigating this

1 matter, not within the White House, other people who
2 are investigating this matter, he's not discussed it
3 with anybody else, that's going to satisfy you?

4 MR. GIUFFRA: Yes.

5 MR. BARRON: And it will stop at that
6 point?

7 MR. GIUFFRA: Yes.

8 THE WITNESS: Other than the people that I
9 mentioned to you, namely, Mr. Klein and other
10 attorneys in the Counsel's Office, I have not
11 discussed this document with anyone other than my own
12 counsel and people who are investigating this matter.

13 MR. GIUFFRA: Could we go off the record
14 just for a second?

15 (Discussion off the record.)

16 BY MR. GIUFFRA:

17 Q Have you ever discussed anything contained
18 on this inventory with Mr. Nussbaum?

19 A At the time I completed this inventory, I
20 shortly thereafter discovered Mr. Foster's note, and
21 that was what I discussed with Mr. Nussbaum. I don't
22 believe Mr. Nussbaum and I ever actually had a

1 discussion about the contents of this inventory.

2 Q Have you ever discussed the contents of
3 this inventory with Maggie Williams?

4 A I don't believe I've ever talked to her
5 about the inventory.

6 Q Now you were aware, when you spoke to Mr.
7 Barnett, that certain documents relating to the
8 President and Mrs. Clinton's personal matters would
9 be transported to Williams & Connolly?

10 A I don't think I said that.

11 I think what I said was that Mr. Barnett
12 told me that documents that I understood to be from
13 Vincent Foster's office would be sent to Williams &
14 Connolly. I don't know anything about what the
15 subject matter was, the files that Mr. Barnett was
16 referring to, or whether the files that he was
17 referring to that night were ever actually
18 transferred.

19 Q Did you ever indicate to anyone that there
20 were documents contained in Mr. Foster's office that
21 should be transported to Williams & Connolly?

22 A I never discussed transporting documents

1 to Williams & Connolly with respect to this
2 inventory.

3 Q Other than your counsel, Joel Klein, or
4 FBI agents or independent counsel investigators, did
5 you ever discuss the fact that you identified, during
6 the course of your inventory, documents bearing on
7 personal matters of the President and Mrs. Clinton?

8 A I don't think that I ever characterized
9 these files as bearing on personal matters of the
10 President and Mrs. Clinton.

11 Q Just take page Z4, item 7, Personal -
12 Clinton Papers.

13 MR. BARRON: Let's just be careful.
14 You're making an assumption of fact based on what you
15 see there, which is apparently what was on the file
16 folder. I don't think that Mr. Neuwirth can help you
17 with that assumption of fact.

18 THE WITNESS: What I can say is that it is
19 a common practice at the White House, when people
20 have a file that is their personal file, that they
21 may have brought to the White House, but not in
22 connection with any work that we're doing, stored in

1 a White House file, you can mark "personal" on it.
2 If I keep a bank statement in the drawer in my
3 office, I could mark that "personal."

4 BY MR. GIUFFRA:

5 Q Other than with your counsel, --
6 Strike that.

7 (Pause.)

8 All right. Other than with your counsel,
9 have you ever discussed with anyone whether Mr.
10 Foster worked on personal matters for President and
11 Mrs. Clinton while he was Deputy White House Counsel?

12 MR. BARRON: Can we have the same
13 understanding with respect to discussions with prior
14 investigations?

15 MR. GIUFFRA: I think he can testify, in
16 the context of investigation, I've been asked that
17 question, and I've answered it. He doesn't have to
18 go beyond that.

19 MR. BARRON: That's fine. I just don't
20 want to get into investigating the investigations.

21 MR. GIUFFRA: No, we have no intention of
22 doing that at all.

1 MR. KRAVITZ: It's my understanding
2 actually from Mr. Star is that he doesn't want us to
3 go into even what people were asked in the Grand Jury
4 by his investigators.

5 THE WITNESS: Other than discussions I've
6 had with my counsel, or questions I may have been
7 asked by people who were investigating this matter,
8 there were numerous discussions in the White House in
9 the weeks following Mr. Foster's death on the topic
10 of whether Mr. Foster was handling personal matters
11 for the Clinton's and those questions came up largely
12 in the context of press inquiries that were being
13 asked after the note was found.

14 And those discussions focused on questions
15 that were raised, and my understanding was that there
16 were matters that Mr. Foster handled that, while they
17 had personal components, also had official
18 components, like taxes, financial disclosure forms,
19 and other such matters. And that Mr. Foster's role
20 was to handle the official components of those
21 matters.

22 BY MR. GIUFFRA:

1 Q With whom do you recall having discussions
2 regarding the extent to which Mr. Foster handled
3 personal matters for the President and Mrs. Clinton
4 during this period?

5 A The discussions I had weren't about
6 whether Mr. Foster did anything on personal matters,
7 but those discussions were with people in the White
8 House Press Office, and others who were involved in
9 responding to press inquiries during that period.

10 Q So this would have been Mr. Geren?

11 A Mr. Geren would have been one of the
12 people.

13 Q Dee Dee Myers?

14 A Dee Dee Myers would have been one of the
15 people.

16 Q Lisa Caputo?

17 A I think Lisa Caputo played some role.

18 Q Did you have any conversations on this
19 matter with Maggie Williams?

20 A I don't know whether I had a particular
21 conversation with Maggie Williams on this particular
22 subject.

1 Q Do you know whether Mr. Nussbaum spoke
2 with Maggie Williams about the extent to which Mr.
3 Foster handled personal matters for the Clinton's?

4 A The question is whether Maggie Williams
5 spoke to Mr. Nussbaum about this?

6 MR. GIUFFRA: Why don't you read the
7 question back.

8 (Readback.)

9 MR. BARRON: I think it might be helpful,
10 given the witness' prior testimony, if we could use a
11 more neutral phrase, like the issue of whether Mr.
12 Foster worked on Clinton personal matters, so there's
13 not an assumption built into your question.

14 MR. GIUFFRA: That's fine.

15 MR. BARRON: With that clarification, I
16 don't have any problem with the witness going ahead
17 to answer the question if he's comfortable.

18 THE WITNESS: I don't know whether Mr.
19 Nussbaum and Ms. Williams ever discussed that issue.

20 BY MR. GIUFFRA:

21 Q Do you know whether Mr. Nussbaum and the
22 First Lady ever discussed the issue of whether Mr.

1 Foster handled personal matters for the Clinton's?

2 A I do not know.

3 Q Do you know whether Mr. Nussbaum and Susan
4 Thomases ever discussed the issue of whether Mr.
5 Foster handled personal matters for the Clinton's?

6 A I don't know.

7 (Pause.)

8 Q Approximately how long did it take you to
9 prepare this inventory denominated Z1 through Z6?

10 A I think I spent a few hours in the
11 morning, took a lunch break, and some period of time
12 in the afternoon. I don't remember how long my lunch
13 break was. It may have been several hours.

14 Q And you would basically pull out each
15 file, write it down on a legal pad, and keep going?

16 A Whatever size pad it was, yes.

17 Q Did you review the contents of any of the
18 file folders?

19 A I don't think I ever looked at the file
20 contents in any real detail. I did take account of
21 whether there were documents in the file or not.

22 Q How long would you estimate it took you to

1 prepare the inventory?

2 MR. KRAVITZ: I think you've already asked
3 him that question.

4 MR. GIUFFRA: He said a few hours in the
5 morning and then he took a lunch break.

6 THE WITNESS: And I said some number of
7 hours in the afternoon.

8 BY MR. GIUFFRA:

9 Q Do you know the total number of hours you
10 worked to prepare this inventory?

11 A No.

12 Q So more than two hours?

13 A I think that the process of doing the
14 inventory, putting personal items of Mr. Foster that
15 I found in the box that I obtained for that purpose
16 took some number of hours.

17 I mean, at one point, I found some black
18 and white photographs of Mr. Foster and his daughter
19 with the President, and I think I stepped out to show
20 those to some people.

21 So the total amount of time I was working
22 on this process covered several hours. Again, I just

1 don't know how long the lunch break was. By lunch
2 break, I mean it was a break where I may have had
3 lunch and also done something else.

4 Q Was preparing this inventory your primary
5 focus in terms of your activities on the 26th?

6 A I think that prior to the discovery of the
7 note, I spent more time on this inventory than
8 anything else.

9 Q Now at the time of Mr. Foster's death, was
10 there discussion in the White House as to why he
11 might have committed suicide?

12 A Yes.

13 Q Was this a subject of great interest among
14 his former colleagues?

15 A I think that the people who worked with
16 him, it would have been inhumane not to be concerned
17 about why Mr. Foster had died.

18 Q Would you please describe --
19 Strike that.

20 Did there come a time in the course of
21 preparing this inventory that you found scraps of
22 paper in Mr. Foster's briefcase?

1 A After I had completed the inventory, and
2 when I was packing personal items that I found, like
3 photographs, into a box, I saw the briefcase against
4 the wall under the window behind Mr. Foster's desk.
5 I knew it belonged to Mr. Foster and I understood
6 that it was empty, and I picked it up and carried it
7 over to put it into the box.

8 And because I didn't want to destroy the
9 pictures that were lying across the top of the box, I
10 turned the briefbag to try to fit it into the box
11 without causing such damage. While I was doing that,
12 scraps of yellow paper fell out.

13 Q Why did you understand the briefcase was
14 empty?

15 A Because it both looked empty, it felt
16 empty, and my understanding was that whatever
17 contents were in the briefbag had been handled by Mr.
18 Nussbaum during the review that occurred the previous
19 Thursday.

20 Q Approximately how many scraps of paper
21 fell out of the briefcase as you were trying to place
22 it in the box?

1 A I don't remember what the exact number
2 was, but it was fewer than the total number of scraps
3 of paper that were in the briefbag.

4 Q When you saw these scraps of paper, what
5 did you do?

6 A I picked them up and noticed that they had
7 handwriting on them that was like Mr. Foster's. And
8 when I saw that there were a number of pieces of
9 these paper scraps, I brought the scraps of paper
10 into Mr. Nussbaum's office, which no one was in at
11 the time, but which had a conference table, and on my
12 way in, I asked -- I think either on my way in or
13 after I noticed that I had the scraps of paper that
14 looked like a piece of paper once they were put
15 together, or going to, I asked one of the assistants
16 in the outer office to call Mr. Nussbaum, either by
17 paging him or phoning him, and I went back into Mr.
18 Nussbaum's office to try to put the scraps of paper
19 together.

20 And Mr. Nussbaum arrived very shortly
21 thereafter.

22 Q Did you bring the briefcase into Mr.

1 Nussbaum's office or did you remove the scraps of
2 paper from the briefcase?

3 A I think that I may have removed the scraps
4 of paper from the briefcase but also brought the
5 briefcase or the briefbag into Mr. Nussbaum's office,
6 and I don't recall whether I got all the scraps out
7 while it was still in Mr. Foster's office. I think I
8 may have taken a few more scraps out as I was laying
9 it on the table in Mr. Nussbaum's office.

10 Q Did the briefcase have any side pockets in
11 its interior?

12 A I don't believe that the briefbag had any
13 side pockets, but I could be wrong about that. I
14 don't recall any.

15 Q When you looked in the briefbag, the
16 scraps of paper were at the bottom of the briefbag?

17 MR. BARRON: Hold on a second. I just
18 want to make sure about the chronology when you asked
19 him about looking into the briefbag.

20 MR. GIUFFRA: I'm talking about the 26th.

21 MR. BARRON: And after the first few
22 pieces had come out?

1 MR. GIUFFRA: Correct.

2 Let's just go off the record.

3 (Discussion off the record.)

4 (Readback.)

5 THE WITNESS: After the scraps of paper
6 fell out of the briefbag, I don't know whether I
7 actually looked in or stuck my hand, but I believe
8 that the scraps of paper were at the bottom of the
9 bag. I recall there being some sort of small divider
10 piece in the center of the bottom and the scraps of
11 paper may have been either stuck under or against
12 that, between the side of the bag.

13 And I remember that I actually had to
14 stick my hand in to pull some of the scraps out.
15 They wouldn't all just fall out of the bag.

16 BY MR. GIUFFRA:

17 Q Was there one or more than one divider in
18 this briefbag?

19 A I don't know, and I don't think it was the
20 type of divider that came all the way up to the top
21 of the bag. As I told you earlier, it was a bag that
22 would expand. I think that when it's folded closed,

1 it's supposed to slightly expand.

2 There were either bumps or curves in the
3 bottom of the bag that came together at a central
4 point that was like a divider.

5 Q Do you have any recollection as to whether
6 any of the scraps of paper were sticking to the side
7 of the bag or the side of the divider?

8 A I don't recall exactly where they were,
9 but I just remember that they were in the bottom of
10 the bag. They seemed to be lodged in some way in the
11 bottom of the bag, or at least that I had to pull
12 them out with my hand.

13 Q I apologize if I've asked this, but I just
14 want to be clear. Were the scraps on both sides of
15 the divider or on just one side?

16 A I'm not sure. I just know that they were
17 at the bottom of the bag.

18 Q Prior to the 26th, had anyone ever
19 discussed with you the fact that there might be
20 scraps of paper in the bottom of this briefcase?

21 A No.

22 Q Did Mr. Nussbaum ever indicate to you, at

1 any time, that he was aware that there might be
2 scraps of paper in the bottom of the briefcase?

3 A No.

4 Q Did Mr. Sloan ever indicate to you that
5 there might be scraps of paper --

6 Strike that.

7 Has Mr. Sloan, at any time, ever indicated
8 to you that there might have been scraps of paper in
9 the bottom of the briefcase before your discovery?

10 A I found scraps of paper in the briefbag.
11 If your question is, did Mr. Sloan ever tell me that
12 he was aware that there might be scraps of paper in
13 the briefbag before the time I found them there, the
14 answer is no.

15 Q As you were putting the note together, I
16 believe you testified Mr. Nussbaum arrived. Is that
17 correct?

18 A That's correct. Because I had asked for
19 him to be contacted.

20 Q And did there come a time when you noticed
21 there was a missing piece in the note?

22 A When we put the pieces of the note

1 together, I felt that we had the full text of the
2 note. I don't recall a piece being absent on the
3 note at that time.

4 What I was focusing on, I think, was the
5 fact that it appeared to have the full text being
6 written on that piece of paper.

7 Q What did Mr. Nussbaum say to you when he
8 saw you putting this note together?

9 A He came over and helped me finish putting
10 it together.

11 Q Do you recall anything about your
12 discussions at that point?

13 A I think we were trying to put together the
14 note and see what it was. And Mr. Nussbaum may, at
15 that point, have read it out loud once we put it
16 together, and I don't know whether it was at that
17 point or a subsequent point, that he tried to write
18 down on another piece of paper the contents of the
19 note.

20 Q Did Mr. Nussbaum --
21 Strike that.

22 Did Mr. Nussbaum try to contact anyone

1 upon the discovery of the note?

2 A Yes.

3 Q Who did he contact?

4 A He asked me to wait in his office while he
5 went to get Mac McLarty, the Chief of Staff. He came
6 back with Bill Burden from Mr. McLarty's office and
7 told me that Mr. McLarty was traveling with the
8 President in Chicago.

9 Q Did Mr. Nussbaum attempt to locate the
10 First Lady?

11 A He did later.

12 Q Do you recall when that was?

13 A I don't know the exact time, but the
14 sequence of events was that after Mr. Burden saw the
15 note, an effort was made to contact Mr. McLarty, who
16 was in Chicago, and there was a brief discussion with
17 Mr. McLarty, who said he would call back.

18 And after that discussion, Mr. Nussbaum
19 went to the First Lady's office and came back with
20 her.

21 Q And she was in her office in the West Wing
22 of the White House?

1 A I actually don't know whether she was in
2 her office at the time Mr. Nussbaum located her.

3 Q The First Lady came to Mr. Nussbaum's
4 office in the West Wing, correct?

5 A That's correct.

6 Q What did the First Lady do or say?

7 A Mr. Nussbaum told the First Lady that this
8 note in Mr. Foster's handwriting had been found and
9 he showed it to her, laid out on the conference table
10 in his office.

11 I don't think the First Lady actually read
12 it, as opposed to having had it described to her.

13 Very soon after the First Lady came into
14 the office, the call came back from Mr. McLarty in
15 Chicago, and once that discussion began, the First
16 Lady left.

17 Q Do you know whether Mr. Nussbaum described
18 the contents of the note to the First Lady?

19 A I really don't know how much detail Mr.
20 Nussbaum went into at that point, and as I said, the
21 First Lady wasn't really there very long because this
22 call came back from Mr. McLarty. She did not stay

1 for long.

2 Q Do you know whether the First Lady read
3 the note?

4 A I think I said earlier that I don't think
5 she actually read the note.

6 Q Did the First Lady appear to be surprised
7 by the discovery of this note?

8 A I don't know what the First Lady may have
9 felt at that time, but I think all people who became
10 aware of the note, it was just another part of a very
11 sad set of events where someone who people knew very
12 well and respected had died.

13 Q Did the First Lady say anything upon being
14 told of the discovery of this note?

15 A As I said, I don't recall the details of
16 this conversation except that it was very brief.

17 Q Do you know if Mr. Nussbaum --
18 Strike that.

19 From what Mr. Nussbaum said in your
20 presence, did it appear he had advised the First Lady
21 of the discovery of the note, prior to the time that
22 she came into Mr. Nussbaum's office?

1 A I don't know, but I do know that I think
2 he had apprised her of it in his office.

3 Q So your testimony would be that it would
4 appear to you that the first time the First Lady was
5 advised of the note was in Mr. Nussbaum's office in
6 your presence?

7 A I think my testimony was that I don't
8 know.

9 My best recollection is that Mr. Nussbaum
10 apprised her of it in the office.

11 Q In his office?

12 A That's correct.

13 Q Did it at all seem odd to you that the
14 First Lady did not seek to read this note?

15 A Well, what I told you was that I don't
16 think she read the note.

17 Q Does it at all seem odd to you that it
18 appears that she did not read the note?

19 A She was there for a very brief time. I
20 think that Mr. Nussbaum was telling her what had
21 happened and describing what the note was, when Mr.
22 McLarty's call came back.

1 Q Do you know whether Mr. Nussbaum described
2 the contents of the note?

3 (Discussion off the record.)

4 MR. BARRON: I think you already asked
5 that question. He already responded to it.

6 MR. GIUFFRA: Why don't you answer it one
7 more time, then we'll just go on.

8 MR. BARRON: I think what I'd prefer to do
9 is have the previous question and answer read back,
10 if we can do that. I think I can probably tell you
11 where it is.

12 (Pause.)

13 MR. GIUFFRA: I think my question's a
14 pretty simple question.

15 MR. BARRON: But you're not entitled to
16 ask the same question over and over again, if you've
17 already asked him and he's already answered it.

18 MR. GIUFFRA: I thought his answer was a
19 little bit ambiguous on this point.

20 MR. BARRON: I think you asked exactly
21 this question.

22 MR. GIUFFRA: We'll see if the Reporter

1 can find it.

2 MR. BARRON: If he asked the question,
3 when the First Lady came in, what happened, if you
4 can find that place, then you can describe what Mr.
5 Nussbaum said about the note.

6 (Readback.)

7 BY MR. GIUFFRA:

8 Q Did Mr. Nussbaum describe any of the
9 statements in the note to the First Lady?

10 A He may have, but at this point, I really
11 don't remember which ones, if he did.

12 Q So your answer would be, you're just not
13 sure one way or the other?

14 A As I said earlier, I really don't have a
15 clear recollection of the discussion with the First
16 Lady because it was brief, and it was in the midst of
17 a lot of other activity.

18 (Pause.)

19 Q Have you ever discussed with Mr. Nussbaum
20 why he did not discover the note on July 22nd?

21 A No, I have not.

22 Q On no occasion, even at the time it was

1 discovered --

2 Strike the question.

3 Your testimony is that you do not recall
4 ever discussing with Mr. Nussbaum why he didn't find
5 the note on the 22nd?

6 A I don't think we actually discussed that
7 issue.

8 Q Does that seem odd to you that you never
9 discussed that with Mr. Nussbaum?

10 A At the time that I found the note, there
11 were a series of urgent matters that had to be
12 attended to, and if I did have any discussion with
13 him about it at that time, I really don't recall.

14 Q Mr. Nussbaum is no longer White House
15 Counsel, correct?

16 A He is no longer White House Counsel.

17 Q Is he someone you still communicate with
18 from time to time?

19 A I've had actually quite infrequent
20 communication with him since he left the White House.

21 Q At any time, up until the present, have
22 you ever discussed with Mr. Nussbaum why he did not

1 discover the note on July 22nd?

2 MR. BARRON: I think he's already answered
3 that.

4 MR. GIUFFRA: I guess his answer is going
5 to be whatever the answer is now, right?

6 THE WITNESS: The answer is that I don't
7 think I had a discussion with Mr. Nussbaum on that
8 topic.

9 BY MR. GIUFFRA:

10 Q Have you ever discussed, with Bill Burden,
11 why Mr. Nussbaum did not discover the note on July
12 22nd?

13 A I don't think I have discussed that topic
14 with Mr. Burden.

15 Q Have you ever discussed with Cliff Sloan
16 why Mr. Nussbaum did not discover the note on July
17 22nd?

18 A I do not believe I have discussed that
19 topic with Mr. Sloan.

20 Q Have you ever discussed with anyone, other
21 than your counsel and law enforcement officials, why
22 Mr. Nussbaum did not discover the note on July 22nd?

200

1 A I am sure there have been conversations
2 I've had, I don't remember the context or with whom,
3 where the fact that Mr. Nussbaum did not discover it
4 has come up.

5 But the question of why he did not
6 discover it is not something that I think I've
7 discussed with any one other than my own counsel, or
8 to the extent it's come up in any prior
9 investigations of this matter.

10 Q Do you have any opinion as to why Mr.
11 Nussbaum did not discover the note on July 22nd?

12 A No.

13 Q Have you had any discussion with anyone,
14 other than your counsel, with regard to whether the
15 note, the torn up pieces of the note were not in the
16 briefcase on July 22nd?

17 MR. BARRON: Could I hear that one back
18 again?

19 (Readback.)

20 THE WITNESS: As I said before, there have
21 been discussions, although I don't remember the
22 details or with whom I had them, about the fact that

1 the note was not discovered on the 22nd, but why it
2 was not discovered, including whether or not the note
3 was in the bag, is something that I don't think I've
4 discussed with anyone, other than my own counsel or
5 people who have investigated this matter previously.

6 BY MR. GIUFFRA:

7 Q And your testimony is you don't have any
8 view as to why the note was not discovered on the
9 22nd?

10 MR. BARRON: You're asking him the same
11 question you asked him before, whether or not he has
12 an opinion on that subject. He said no.

13 MR. GIUFFRA: Fine. We'll let the
14 question go. We'll let the prior answer stand.

15 BY MR. GIUFFRA:

16 Q After the First Lady left the office, you
17 testified that Mr. McLarty had called?

18 A He called back.

19 Q What happened in that conversation?

20 A Mr. McLarty called back, and David Gergen,
21 who was with Mr. McLarty in Chicago, was also on the
22 call, and it was a conversation that, at the White

1 House, included Mr. Nussbaum and Mr. Burden, and I
2 was also present in Bernie's office during the
3 conversation.

4 Q Was this on a speaker phone?

5 A Mr. Gergen and Mr. McLarty were on the
6 speaker phone.

7 Q Let me ask a question before we go
8 further. Was Mr. Nussbaum someone who regularly used
9 a speaker phone?

10 A I don't know how frequently he used it.
11 He did use it.

12 Q I mean, for example, there are some people
13 who use their speaker phones for all conversations
14 except for a very few, and then there are other
15 people who only use their speaker phone rarely.

16 Where did Mr. Nussbaum fit in that
17 continuum?

18 A Since I wasn't with him every time he had
19 phone conversations, I don't know.

20 Q When he spoke to you, did he usually use a
21 speaker phone?

22 A I don't recall a lot of conversations

1 where I was on the phone with him where he was on a
2 speaker phone on the other side of the phone.

3 Q What do you recall about this conversation
4 with McLarty and Burden?

5 A I recall that Mr. Nussbaum used his
6 speaker phone because more people than himself were
7 in the office.

8 I think that the focus of the call was the
9 appropriate steps to take, now that the note had been
10 discovered, and I think by the conclusion of the
11 call, it was agreed that, one, it was appropriate to
12 show the note to Mrs. Foster before anything was done
13 with it, and that she would be in Washington the next
14 day.

15 That the President was tied up on his
16 trip, and that it would be appropriate at least to
17 tell the President about the note when he got back,
18 before taking any further steps.

19 I don't think there was ever a question
20 about whether the note would be turned over to law
21 enforcement officials but it was felt that there
22 should be research done on some questions in case

1 issues came up the next day and that people were
2 going to have a response to.

3 Q What sort of issues might come up the next
4 day that people would want a response to?

5 A Whether a note like this, that talked
6 about matters that Mr. Foster was working on in his
7 capacity as White House Counsel was privileged in any
8 way.

9 Whether something like this, which was not
10 dated and did not talk about suicide, could be
11 considered a suicide note as opposed to some other
12 type of writing.

13 Whether there was some sort of legal
14 obligation that was unambiguous with respect to
15 turning it over to the law enforcement officials.

16 And, as I said, I didn't understand this
17 research to be for the purpose of constructing
18 arguments against turning over the note. I think
19 that it was because people anticipated that questions
20 of this type could come up in discussions about the
21 note, and that it was appropriate to have answers to
22 those questions.

1 Q Were law enforcement officials notified of
2 the note's existence on July 26th?

3 A July 26th is Monday. I'm not aware of any
4 such notification.

5 Q Do you know why they were not notified of
6 the note's existence, as opposed to having the note
7 turned over?

8 A My understanding was that, as I said
9 earlier, in terms of the question of timing, it was
10 felt that it would be appropriate to let Mrs. Foster
11 know that such a note had been discovered, and since
12 she was coming to Washington, to do so in person,
13 before turning it over.

14 And I think the feeling was -- my
15 understanding was that the feeling was that Mrs.
16 Foster deserved to learn about this before she read
17 about it in the newspaper and I think there was also
18 a feeling that it would be appropriate to be able to
19 tell the President about at least the existence of
20 the note before turning it over.

21 Q What about just notifying law enforcement
22 officials of the note's existence?

1 A I think I already told you that that, to
2 my knowledge, did not occur on the 26th.

3 Q There's a difference between turning the
4 note over and just notifying law enforcement that we
5 have the note.

6 MR. BARRON: He just explained that he
7 didn't want somebody, somebody didn't want Mrs.
8 Foster to read about it in the newspapers.

9 MR. GIUFFRA: Okay.

10 BY MR. GIUFFRA:

11 Q Why wasn't Mrs. Foster notified of the
12 note's existence on the 26th?

13 A Her husband had just died. She was coming
14 to Washington the next day. My understanding was
15 that people thought it would be a matter of simple
16 decency to tell her about it in person and give her
17 an opportunity to view it before it was turned over.

18 Q Was there a concern that law enforcement
19 officials would leak the existence of the note to the
20 press?

21 A I don't know if there was any such
22 concern. I never heard that concern expressed.

1 Q Let me show you a document that bears Park
2 Police 68.

3 (Handing document to witness.)

4 BY MR. GIUFFRA:

5 Q What is this document?

6 A This appears to be a photocopy of what
7 looks to be the note that I found in Mr. Foster's
8 office.

9 Q Could you state for the record what if
10 anything in this note White House officials believed
11 might be privileged?

12 A Vince Foster was --

13 MR. BARRON: Hold on a for a minute.

14 I think that's a mischaracterization of
15 some of the earlier testimony. I don't think that he
16 said that anybody had concluded something might be
17 privileged.

18 MR. GIUFFRA: I'll rephrase the question.

19 MR. BARRON: The question was on issues
20 rather than as to any particular matter.

21 MR. GIUFFRA: That's okay, I'll rephrase
22 it.

1 BY MR. GIUFFRA:

2 Q Mr. Neuwirth, you indicated that the
3 decision was made on the 26th that research needed to
4 be done into whether anything in the note might
5 contained privileged matters.

6 Is that correct?

7 A I think the question was whether any
8 privilege issues were indicated by the note that had
9 been written by the White House Attorney, talking
10 about matters he had worked on in his capacity as a
11 White House attorney.

12 Q Did anyone undertake such research on the
13 night of July 26th?

14 A I was the person who was tasked by Mr.
15 Nussbaum to look at the set of questions that I
16 described earlier.

17 I told Mr. Nussbaum at the start of that
18 work that while I had not been a party to any
19 conversations he had had with the Park Police about
20 what responsibilities the White House had for
21 anything that was found after the review on Thursday,
22 the 22nd, if it was understood that the White House

1 would provide the Park Police with any suicide note
2 or similar type of document, I was not aware of any
3 basis for not making this document available.

4 And I told him that not making it
5 available to investigators, and I also told that to
6 Mr. Nussbaum later that evening and again the
7 following morning, the research I did didn't lead me
8 to any different conclusions on that point.

9 Q What was Mr. Nussbaum's response the first
10 time you indicated to him that you believed the note
11 should be turned over to the law enforcement
12 authorities?

13 A I don't think there was any disagreement
14 on Mr. Nussbaum's part. And, as I said, I don't
15 think that anybody suggested that this note should
16 not be turned over to law enforcement officials.

17 I think the sole question was one about
18 timing in light of Mrs. Foster coming in the next day
19 and the President traveling.

20 And I think, as I said, that these
21 research issues were principally to put people in a
22 position to answer questions that might come up

1 within the White House the next day.

2 Q Do you remember specifically any of the
3 legal research that you conducted on the evening of
4 the 26th?

5 A Well, I think that the topics I was asked
6 to look at, as I said, were whether did something
7 like this constitute a "suicide" note, and I didn't
8 really find anything that was exactly on point.

9 Q Do you recall, did you look on Lexus or
10 did you look in a law book?

11 A I think I used law books in the library
12 and looked in places where I thought there might be
13 relevant information.

14 Q Do you recall specifically where you might
15 have looked?

16 A I don't recall which books I looked at or
17 which cases I looked at, but I used what I considered
18 to be the standard legal research techniques.

19 And in terms of the obligation to make
20 something like this available, again, while I looked
21 at this issue through various angles, I didn't find
22 anything that had similar facts or that was clearly

1 enough on point to change the conclusion I had
2 assumed I would end up with, which was that something
3 like this should be produced, which it was.

4 Q Was the scope of your research attorney-
5 client privilege, or did it also include Executive
6 privilege?

7 A Well, I didn't really look, I didn't
8 really do research on the attorney-client privilege
9 issue or Executive privilege issue. I think that
10 this was a matter of a document in which a White
11 House attorney had written down thoughts about
12 matters he was working on, and the question was, did
13 it reflect an attorney-client communication or was it
14 the work product of the attorney.

15 But I think that none of those types of
16 privileges were ever asserted or discussed beyond the
17 initial discussion that we had.

18 Q During the initial discussion that you had
19 with Mr. Nussbaum, do you recall which statement
20 contained in the note raised a possible attorney-
21 client issue?

22 A I don't think it was a matter of

1 particular statements as much as the fact that these
2 were writings of an attorney about matters that he
3 was working on in his capacity as an attorney, and I
4 think that all it appears that several of the items
5 here relate to matters that Mr. Foster was handling
6 in that capacity.

7 Q Do you recall discussion of any of those
8 particular items on the night of July 26th?

9 A I don't recall discussion of any of the
10 particular items with respect to attorney-client
11 privilege questions. I think the attorney-client
12 privilege issue was a general one. As I said, no
13 such privilege was ever asserted, and I'm not aware
14 of any serious position that it would be asserted.

15 Q Was there any discussion of the statement,
16 quote, "I did not knowingly violate any law or
17 standard of conduct" close quote.

18 A My best recollection is that that line was
19 obviously noticed. I don't think people knew what it
20 meant or what it was referring to.

21 Q Let me give you the next one.

22 Quote, "no one in the White House, to my

1 knowledge, violated any law or standard of conduct.
2 I think it's regarding any action of the Travel
3 Office" close quote.

4 MR. BARRON: The question is whether there
5 was any discussion of that statement?

6 BY MR. GIUFFRA:

7 Q Of the Travel Office?
8 (Handing document to witness.)

9 THE WITNESS: The word, it looks like what
10 this says is, no one in the White House, to my
11 knowledge, violated any law or standard of conduct,
12 including any action in the Travel Office.

13 BY MR. GIUFFRA:

14 Q Was there any discussion of the Travel
15 Office?

16 A I think that there was a recognition that
17 all of these things had been said, and again, I think
18 that each item people didn't know upon discovering
19 the note exactly what Mr. Foster meant or what his
20 state of mind was when he wrote it.

21 (Pause.)

22 Q The note mentions the Ushers Office. Do

1 you know whether anyone went back and looked in Mr.
2 Foster's files on the 26th to see whether there were
3 any documents related to the Ushers Office in those
4 files?

5 A I was not aware of any effort to look at
6 those files on the 26th.

7 Q For any purpose?

8 A I was aware of no effort to look at the
9 files relating to the Ushers Office on the 26th.

10 Q Was there any effort made on the 26th to
11 look at any of Mr. Foster's files to see if there
12 were documents that might bear on statements made in
13 this letter, in this document?

14 A If there were such efforts on the 26th, I
15 am not aware of them.

16 Q Do you recall when the White House Press
17 Office was notified of the note's existence?

18 A I do not know when they were notified of
19 the note's existence.

20 Q Did there come a time when you discussed
21 the note with the White House Press Office?

22 A I discussed the note with the White House

1 Press Office to prepare responses to press inquiries
2 after the note had been made available to law
3 enforcement officials on the 26th.

4 THE WITNESS: Can't we take a five-minute
5 break?

6 MR. GIUFFRA: Sure.

7 (Recess.)
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1 BY MR. GIUFFRA:

2 Q On the afternoon and evening of July 26,
3 1993, was there any discussion of the need to prepare
4 a response to press inquiries prior to the disclosure
5 of the note's existence?

6 A I don't think dealing with the press was
7 one of the issues that was discussed. But I do think
8 there was a recognition that the content and
9 discovery of the note would trigger press inquiries.

10 Q Do you know if any effort was made on the
11 evening of the 26th, or during the day on the 27th,
12 in crafting responses to the inevitable press
13 inquiries about the note?

14 A It is my understanding that some sort of
15 statement to the press was made on Tuesday the 27th
16 by the White House. But I did not participate in the
17 preparation of that statement, as best as I can
18 recall.

19 Q Do you know if the existence of the note
20 was delayed so that the White House would have time
21 to prepare a response to press inquiries?

22 A I don't know what you mean by the

1 "existence" of the note was delayed.

2 Q You testified that the note was not
3 disclosed to law enforcement authorities on the 26th
4 -- well, let's just strike that.

5 Do you know when the note was disclosed to
6 law enforcement authorities?

7 A I don't know the exact time. I know that
8 it was on Tuesday the 27th.

9 Q Do you remember if it was early in the day
10 or late in the day?

11 A I believe it was in the latter part of the
12 afternoon.

13 Q Do you recall anything about the
14 circumstances in which the note's existence was
15 disclosed to the law enforcement authorities?

16 A I don't have personal knowledge, because I
17 wasn't there. But I was told, I think, by Mr.
18 Nussbaum and perhaps also by Mr. Burden that the note
19 had been presented to the Attorney General and
20 perhaps Mr. Heymann. And I don't know if any other
21 law enforcement officials were present or also given
22 copies of the note.

1 Q Did Mr. Nussbaum say anything to you about
2 the reaction of the Attorney General and perhaps Mr.
3 Heymann to the note's existence?

4 (Pause.)

5 A No, he did not.

6 Q Are you aware of whether the Attorney
7 General or Mr. Heymann expressed the view that the
8 note's existence needed to be turned over to the Park
9 Police?

10 A I don't know whether they discussed it
11 that night. But it's my understanding that
12 ultimately, the Justice Department did provide either
13 the original of the note or a copy to the Park
14 Police. And again, I should clarify that by saying I
15 don't know whether the White House directly gave the
16 original to the Park Police or not. But on the
17 assumption that they didn't, I think the Justice
18 Department arranged to give the note to the Park
19 Police.

20 Q Do you know whether anyone from the
21 Justice Department expressed any concern to anyone at
22 the White House with regard to the fact that the note

1 had not been turned over to law enforcement
2 authorities?

3 A It was turned over to law enforcement
4 authorities.

5 Q But had not been turned over on the 26th
6 or earlier on the 27th?

7 A I don't know whether they expressed
8 concern about that. Again, I was not present at that
9 meeting.

10 Q Did Mr. Nussbaum say anything to you about
11 anything that the Attorney General or Mr. Heymann had
12 said to him indicating any displeasure that the note
13 had not been turned over?

14 A Mr. Nussbaum did not indicate displeasure
15 about the note not being turned over. The one thing
16 I recall Mr. Nussbaum telling me was that there had
17 been some discussion about privilege issues relating
18 to the note. But I don't recall the details of that.

19 Q Was the disclosure of the note's existence
20 to law enforcement authorities delayed in any way so
21 the White House could prepare responses to press
22 inquiries?

1 A I have no knowledge of that happening.

2 Q Did you spend time on the 27th -- strike
3 that.

4 Did you work with the press office on the
5 27th in preparing a response to the inevitable press
6 inquiries regarding the discovery of the note?

7 A Well, I don't want to characterize the
8 press inquiries as "inevitable." But I did not work
9 with -- to my recollection, I did not work with the
10 press office on that day on whatever statement I
11 think they may have made.

12 Q Did anyone from the press office ask you
13 about the circumstances under which you discovered
14 the note?

15 A I know that after the 27th, I was involved
16 in helping to prepare responses to press inquiries.
17 But I don't think that I actually spoke to anyone at
18 the press office on the 27th itself. I may have, but
19 I really don't think so.

20 Q Was there discussion of disclosure of the
21 note at the counsel's meeting at 9 o'clock on the
22 morning of the 27th?

1 A No, and I don't know whether there was a
2 meeting that day of our office staff.

3 Q When did you report the results of your
4 legal research to Mr. Nussbaum?

5 A As I said before, during the evening of
6 the 26th, I told Mr. Nussbaum that I hadn't found
7 anything that changed my initial conclusion that, if
8 there was an understanding that the White House would
9 provide a suicide note or related type of document to
10 the Park Police after the review, that was found -- I
11 was not aware of any basis for not so turning over
12 this document. I told Mr. Nussbaum the same thing
13 the following morning, I think at or just before 9
14 o'clock. And the following morning was Tuesday, the
15 27th.

16 Q Did Mr. Nussbaum indicate to you in any
17 way that he was looking for a legal basis for not
18 turning over the note?

19 A I think I've said earlier several times
20 that I didn't hear anybody say that they were looking
21 for a basis not to turn over the note. My
22 understanding was that the purpose of this research

1 was to be able to respond to questions that might
2 come up in the White House the next day.

3 Q What kind of questions?

4 A Questions on the topics I was asked to
5 research.

6 Q Did you provide any written memorandum to
7 Mr. Nussbaum?

8 A No.

9 Q Did you prepare any notes in the course of
10 your research?

11 A No.

12 Q Did you speak to Mr. Gergen with regard to
13 the circumstances surrounding the discovery of the
14 note?

15 A I had a conversation with Mr. Gergen and
16 Mr. McLarty on the afternoon of the 26th that I
17 described earlier. I don't know whether we discussed
18 the circumstances of the finding of the note in that
19 conversation, as opposed to the first conversation we
20 had just with Mr. McLarty. But we may have.

21 And it's also possible that after the
22 27th, I had discussions that Mr. Gergen was present

1 where we talked about the circumstances of the
2 finding of the note for the purpose of preparing
3 responses to press inquiries.

4 Q Do you recall when those discussions with
5 regard to responding to press inquiries occurred?

6 A After the 27th for several weeks, there
7 were numerous press inquiries about the note.

8 Q With whom did you participate in those
9 discussions?

10 A I think we've already talked about that.

11 Q So it would be Gearan, Myers -- is that
12 correct?

13 A Yes.

14 Q Gergen, perhaps?

15 A I think David Gergen was involved in some
16 discussions, and other people on the White House
17 staff.

18 Q Do you recall who they were?

19 A Bill Burden was involved. I think we've
20 already discussed the fact that Lisa Caputo may have
21 had some involvement, or did have some involvement.
22 Maggie Williams may have had some involvement. Sloan

1 had some involvement. There was also some
2 involvement by Skip Rutherford, who was working with
3 Mr. McLarty.

4 Q Who was Skip Rutherford?

5 A He is not a member of the White House
6 staff, but -- I don't know what his status was.

7 Q What do you recall about your discussions
8 with Mr. Rutherford?

9 A I recall that he was one of the people who
10 was involved in responding to press inquiries about
11 the note.

12 Q Was he like a political consultant or a PR
13 person?

14 A I don't know the full nature of Mr.
15 Rutherford's background. I know that he's from
16 Arkansas. I don't know exactly what his role was at
17 the White House at that time.

18 Q Do you have any understanding now as to
19 what Mr. Rutherford's role was at the White House?

20 A I think I just said I don't understand
21 what his role was at that time.

22 Q During these discussions with regard to

1 the press inquiries, was there any discussion as to
2 why Mr. Nussbaum had not found the note on the 22nd?

3 A Again, I don't recall any discussions as
4 to why Mr. Nussbaum had never found the note, as
5 opposed to recognizing the fact that he had not found
6 the note.

7 Q Do you recall any discussion in which
8 anyone speculated that the note might not have been
9 in the bottom of the briefcase when Mr. Nussbaum
10 reviewed the files? This is during the press inquiry
11 part of this.

12 A Well, my answers on the press inquiry are
13 similar to the answers I gave when you asked
14 generally.

15 Again, I don't recall any conversation I
16 participated in about why, for whatever reason, Mr.
17 Nussbaum might not have found the note. They were
18 only about -- the only conversations I recall were
19 about the fact that Mr. Nussbaum had not found the
20 note, and --

21 Q What were the nature of those discussions?

22 A Again, as I said previously, they were

1 simply -- I don't remember who I had those
2 conversations with, or when. But that topic was
3 something that was observed at different points.

4 Q Was there some concern that the White
5 House might come in for some criticism because Mr.
6 Nussbaum had not found the note?

7 A I think there was an understanding that
8 questions would be raised about the fact that Mr.
9 Nussbaum had not found the note during the review
10 process on the 22nd, and he had found it on the 26th.

11 Q Was there some concern about the
12 thoroughness -- strike that.

13 Was some concern expressed that perhaps
14 Mr. Nussbaum might have been criticized for not being
15 thorough in the review that he conducted on the 22nd?

16 A At this point, it's difficult for me to
17 dissect what concerns I read about in the press, or
18 what concerns might have been expressed in the White
19 House at the time.

20 Q Do you have any recollection of any
21 concerns being expressed in the White House with
22 regard to criticism of Mr. Nussbaum?

1 A I think people were aware that that type
2 of criticism might be made.

3 Q I believe you testified there were a
4 number of meetings with regard to responding to press
5 inquiries with regard to the note. Why were there so
6 many meetings?

7 A Because there were so many press
8 inquiries.

9 Q Were the press inquiries different such
10 that you needed to change the response?

11 A I don't think -- I already suggested that
12 the responses changed over a two- to three-week
13 period. There was a daily press briefing at which
14 questions related to Vince Foster were asked. Each
15 day, there were new questions posed, and prior to the
16 daily press briefing, the White House was often aware
17 of new questions that might be posed. And so it was
18 necessary to work on the responses to those questions
19 as they came up.

20 It was also often the case that, during a
21 press briefing, a question would come up that the
22 person doing the briefing would not know the answer

1 to, and it would be necessary to determine an
2 appropriate response later that day.

3 Q After the discovery of the note on the
4 26th, did you have any other role with regard to the
5 handling of Mr. Foster's papers in his office?

6 A I did not.

7 Q Did you know what happened to the
8 documents that were contained in Mr. Foster's office
9 after July 26?

10 A I do not, except that I have been made
11 aware that the White House has custody of the
12 documents, or has custody of documents from Mr.
13 Foster's office at the present time. But I don't
14 know where or what documents those are.

15 Q Do you have any knowledge as to whether,
16 for example, the documents contained in the file on
17 page Z4, marked "Personal-Clinton papers," have been
18 turned over to Williams and Connolly?

19 A I do not know.

20 Q Did you ever discuss that subject with
21 anyone?

22 A No.

1 MR. KRAVITZ: What were you just referring
2 to?

3 MR. GIUFFRA: Z4.

4 THE WITNESS: And I should say I don't
5 recall whether that's a topic that I've discussed
6 with any investigator.

7 BY MR. GIUFFRA:

8 Q You don't recall having any conversations
9 with Mr. Nussbaum with regard to the transportation
10 of documents from Mr. Foster's office to Williams and
11 Connolly?

12 A It is possible that at some point, the
13 topic of documents at Williams and Connolly came up
14 in a conversation I had with Mr. Nussbaum. But I
15 don't think it did, and I don't recall any such
16 conversation.

17 Q Were you aware of a press conference that
18 the First Lady gave on April 22, 1994 at which the
19 subject of the handling of the papers in Mr. Foster's
20 office was raised?

21 A I'm aware of the press conference she
22 gave. I don't remember the exact date.

1 Q Have you had any discussions with anyone
2 about the First Lady's statements at that press
3 conference with regard to the handling of the papers
4 in Mr. Foster's office?

5 A There were numerous press reports about
6 that, and it's possible that they came up in
7 discussions I had days after those reports came out --
8 just discussions about the articles.

9 Q Did you ever discuss those articles with
10 Maggie Williams?

11 A No.

12 Q Did you ever discuss those articles with
13 Mr. Nussbaum?

14 A No.

15 Q Are you aware of press reports that Ms.
16 Williams transported documents from Mr. Foster's
17 office to the closet in the residence?

18 A I am aware of press reports that say that
19 documents from Mr. Foster's office were put in the
20 closet in the White House residence.

21 Q Did you ever discuss that subject, those
22 press reports, with anyone at the White House?

1 (Pause.)

2 A I think I already answered this when you
3 asked me whether I discussed the press reports of the
4 First Lady's press conference with anyone. I think
5 my answer is the same. It's possible that this topic
6 came up in conversations I had around the White House
7 after reading those news reports that were a major
8 topic of attention for several days.

9 Q Have you ever discussed anything having to
10 do with the handling of the papers in Mr. Foster's
11 office with Thomas Castleton?

12 A No. Or at least I don't think so.

13 Q Other than conversations you've testified
14 here to today, did you have any other conversation
15 with Maggie Williams with regard to the handling of
16 the papers in Mr. Foster's office?

17 A I don't believe so.

18 Q Other than conversations you've testified
19 here to today, have you had any other discussions
20 with Mr. Nussbaum about the handling of the papers in
21 Mr. Foster's office?

22 A I don't believe so.

1 Q Have you ever had anything having to do
2 with the handling of the papers in Mr. Foster's
3 office with David Watkins?

4 A It is possible that Mr. Watkins was
5 present at sessions to prepare for answers to press
6 inquiries. But I don't believe he was. But if he
7 was, that topic might have come up.

8 Q Other than prior testimony, have you ever
9 discussed anything having to do with the handling of
10 papers in Mr. Foster's office with the First Lady?

11 A No.

12 Q Have you ever discussed anything having to
13 do with the papers in Mr. Foster's office with Susan
14 Thomases?

15 A No.

16 Q Have you ever discussed anything having to
17 do with the handling of the papers in Mr. Foster's
18 office with Patsy Thomasson?

19 A No.

20 Q You've been interviewed by the FBI with
21 regard to the handling of papers in Mr. Foster's
22 office.

1 MR. GIUFFRA: I'll go off the record for a
2 second.

3 (Discussion off the record.)

4 MR. BARRON: It would be an easier
5 question to answer who hasn't appeared than who has.

6 BY MR. GIUFFRA:

7 Q Mr. Neuwirth, bearing in mind the subject
8 matter of this phase of the Senate's inquiry, do you
9 have any other information you believe the Senate
10 should be aware of bearing on the subject of the
11 handling of the documents in Mr. Foster's office that
12 we haven't gone into here today?

13 MR. BARRON: I just think that's too hard
14 a question for any witness to be asked to answer.
15 That depends so much on what counsel for the
16 committee -- for the majority, for the minority, what
17 each of the individual members -- may view as being
18 relevant to their inquiry. And without knowing
19 what's on their mind, which is something we can't
20 possibly know, I don't see how the witness can answer
21 what else should we be sharing with you.

22 MR. GIUFFRA: Let's go off the record for

1 a second.

2 (Discussion off the record.)

3 MR. GIUFFRA: I don't have any further
4 questions. Thank you very much for your cooperation.

5 EXAMINATION

6 BY MR. KRAVITZ:

7 Q Mr. Neuwirth, I want to direct your
8 attention first to the night of July 20, 1993, when
9 Mr. Nussbaum first called you to inform you of Mr.
10 Foster's death. You understand?

11 A Yes.

12 Q Did Mr. Nussbaum tell you during that
13 telephone conversation that he was calling you from
14 his office?

15 A I think so.

16 Q Was it your memory that Mr. Nussbaum
17 specifically said that he was calling from his own
18 office, as opposed to simply calling from the White
19 House counsel's office?

20 A I don't remember Mr. Nussbaum's exact
21 words. It was my understanding that the conversation
22 took place in Mr. Nussbaum's office.

1 Q In his own personal office?

2 A That was my understanding.

3 Q Mr. Nussbaum certainly did not say
4 anything to indicate he was in Mr. Foster's personal
5 office at the time that he called you on July 20?

6 A No, he did not.

7 Q How long did the telephone conversation
8 you had with Mr. Nussbaum on the night of July 20
9 last?

10 A I don't know exactly how long, but it was
11 brief.

12 Q Just a matter of a couple of minutes?

13 A I don't know exactly how long it was.

14 Q Did you get any sense from talking to Mr.
15 Nussbaum that night what his emotional condition was?

16 A I again can't imagine a person not being
17 very saddened to know of Vince's death. It was my
18 impression that Bernie was very sad to learn of Mr.
19 Foster's death.

20 Q Did Mr. Nussbaum ever cry on the
21 telephone?

22 A I don't have a recollection of sensing

1 that Mr. Nussbaum was crying when he spoke to me,
2 since he was at the other end of the phone. He may
3 have been and I just may not have known it. I don't
4 know.

5 Q But you could tell that he was very upset?

6 A He sounded very sad.

7 Q You testified that Mr. Nussbaum called you
8 that night, July 20, 1993, some time after 10 o'clock
9 p.m. You said you weren't sure exactly what time it
10 was.

11 A I think I also said it might have been a
12 little before that. I said I thought it was around
13 10, but I don't remember the exact time.

14 Q If you were to learn that alarm locks for
15 the White House counsel's office suite for the night
16 of July 20, 1993 indicated that the suite was open
17 between the time of 10:42 p.m. and 11:41 p.m., would
18 that refresh your memory in any way as to when it was
19 Mr. Nussbaum called you on that July 20?

20 A I've given you my best recollection. And
21 if the alarm logs mean that Mr. Nussbaum was in the
22 office at a particular time, it doesn't sound like

1 those times are inconsistent with my recollection.
2 But I can't say that my recollection changes based on
3 that.

4 Q I'm going to ask you a few questions about
5 observations that you made the next morning, July 21,
6 1993, in the White House counsel's office suite.

7 You testified that, at some point after
8 you arrived at the White House counsel's office suite
9 on the morning of July 21, Betsy Pond -- you observed
10 Ms. Pond in Mr. Foster's office. Is that right?

11 A Yes.

12 Q I believe you also testified that, at some
13 point that morning, you noticed that Mr. Foster's
14 office appeared to be neat. Is that correct?

15 MR. BARRON: I'm not sure that's an
16 accurate description of his testimony. I think Mr.
17 Giuffra asked whether or not -- how the office looked
18 that morning, and Mr. Neuwirth, as I recall it, said
19 "neat." I don't think at any point he said that he
20 noticed that it looked neat; that he was particularly
21 aware on that day that it looked neat.

22 I have no objection to the question. I'm

1 just not sure that that was a proper or accurate
2 recapitulation of the prior testimony.

3 MR. KRAVITZ: Let me rephrase the
4 question.

5 BY MR. KRAVITZ:

6 Q When you observed Mr. Foster's office on
7 the morning of July 21, 1993, did it look any neater
8 than it ordinarily looked?

9 A I didn't keep careful track of how neat
10 Mr. Foster's office was. I think I said earlier
11 today that my impression was that Mr. Foster's office
12 was generally neat. I can't tell you where on the
13 barometer of neatness his office was that morning.

14 Q Again, I'm going to try to summarize your
15 earlier testimony. I'm certainly not trying to
16 mischaracterize it. If you think I'm doing that,
17 it's not intentional. Just let me know.

18 But my memory is that you testified
19 earlier that when you saw Ms. Pond in Mr. Foster's
20 office on the morning of July 21, 1993, you thought
21 it was inappropriate for Ms. Pond, an assistant to
22 Mr. Nussbaum, to be in Mr. Foster's office. Is that

1 correct?

2 A Yes.

3 Q When you said that, did you mean that you
4 thought it was inappropriate for Ms. Pond to be in
5 Mr. Foster's office because Ms. Pond works
6 specifically for Mr. Nussbaum, or simply that it was
7 inappropriate for any junior staff person in the
8 White House counsel's office to be in Mr. Foster's
9 office that morning?

10 A I think that I meant any staff person at
11 Ms. Pond's level to be in the office.

12 Q You also testified at some point, possibly
13 on July 21, 1993 you saw Mr. Nussbaum enter Mr.
14 Foster's office to make a telephone call from the
15 couch. Is that right?

16 A I think I testified that I saw him in Mr.
17 Foster's office making a telephone call. I don't
18 know that I saw him actually that day.

19 Q It's your testimony that you may have seen
20 Mr. Nussbaum on the couch in Mr. Foster's office
21 making a telephone on July 21, 1993, but you're not
22 sure it was that day?

1 A That's correct.

2 Q Was there a Secret Service officer posted
3 at Mr. Foster's office door at the time you saw Mr.
4 Nussbaum talking on the phone on the couch in Mr.
5 Foster's office?

6 A I don't know.

7 Q Did you go into Mr. Foster's office to be
8 with Mr. Nussbaum when Mr. Nussbaum was on the
9 telephone, whenever this was?

10 A I don't think I went in to be with him. I
11 think I may have been looking for him. Seeing that
12 he was there, I may have stuck my head in. But other
13 than that, I was not in the office to be with him at
14 any point that I can recall.

15 Q While you were able to observe Mr.
16 Nussbaum sitting on the couch in Mr. Foster's office
17 talking on the phone, did Mr. Nussbaum go through any
18 papers or files or anything else in Mr. Foster's
19 office?

20 A No. The only thing I saw was Mr. Nussbaum
21 on the phone. And again, I'm not certain at what
22 point I saw that.

1 Q And whenever it was that Mr. Nussbaum went
2 into Mr. Foster's office to talk on the phone, your
3 understanding is that Mr. Nussbaum's only purpose was
4 to go talk on the phone in a quiet place away from
5 the chaos, the noise in the White House counsel's
6 office suite?

7 A That was my understanding.

8 Q Was that based on something that Mr.
9 Nussbaum said to you?

10 A My understanding is based only on the fact
11 that that was something that, to this day, people in
12 that suite do. The configuration of the suite is
13 such that if there is a meeting, or people gathered
14 in the counsel's own office, the person who is the
15 White House counsel, whether that be Bernie Nussbaum,
16 Lloyd Cutler or Abner Mikva, would go into the deputy
17 counsel's office to have a quiet place to make a
18 phone call.

19 Q I want to direct your attention to the
20 meeting that occurred in the afternoon of July 21,
21 1993 in Mr. Nussbaum's office, involving Mr. Margolis
22 and Mr. Adams from the Department of Justice, as well

1 as some Park Police and possibly other law
2 enforcement officials. Do you understand?

3 A Yes.

4 Q You testified that part of the discussion
5 in that meeting focused on the need to accommodate
6 various privilege issues with law enforcement
7 interests in reviewing the materials and the contents
8 of the office. How, if at all, did the Justice
9 Department or other law enforcement officials present
10 at that meeting on July 21, 1993 define what they
11 viewed to be law enforcement interests in reviewing
12 the contents of Mr. Foster's office?

13 What did they say they wanted to look at?

14 A My understanding -- well, let me say first
15 that I am sure Mr. Margolis was at the meeting, and I
16 think Mr. Adams from the Justice Department was at
17 the meeting. And I don't know whether any other law
18 enforcement officials were at that meeting.

19 But my understanding was that the law
20 enforcement officials were interested in determining
21 whether there was a suicide note or other document
22 that would explain Mr. Foster's death.

1 Q And as far as you understood, based on
2 statements made by Mr. Margolis or other law
3 enforcement officials, their law enforcement interest
4 was limited to the possible discovery of a suicide
5 note or other materials that would indicate why Mr.
6 Foster died. Is that right?

7 A What I can tell you is that my
8 understanding was that that was what they were
9 interested in finding. I don't feel I'm in a
10 position to categorize what they may have felt.

11 Q But your understanding is based on what
12 Mr. Margolis and other law enforcement officials
13 present at the July 21 meeting said?

14 A It was the sense I developed over a two-
15 day period, not just at any one particular meeting.

16 Q But over that two-day period, the sense
17 that you developed was developed based on what Mr.
18 Margolis and other law enforcement officials stated
19 in your presence?

20 A It was based on that, and it was also
21 based on what Mr. Nussbaum had said, and just my
22 general understanding of what they would be looking

1 for at the time.

2 Q You testified that, at the end of the
3 meeting in Mr. Nussbaum's office on the afternoon of
4 July 21, 1993, there was no resolution or agreement
5 as to how the review of the contents of Mr. Foster's
6 office would be conducted the next day. Is that
7 right?

8 A That no final decision had been made about
9 how that review would take place? That is correct.
10 No final decision was made at that time.

11 MR. BARRON: I think it's important to say
12 that that's Mr. Neuwirth's understanding, based on
13 the information that was available to him.

14 BY MR. KRAVITZ:

15 Q How was the discussion left when you were
16 there? Did people say they would speak again in the
17 morning or later that night?

18 A I don't remember exactly how things were
19 left at the end of that meeting, although there were
20 a couple of conversations the next day.

21 As I said earlier, I believe that there
22 was an understanding at that meeting that there were

1 privilege issues that were legitimate, and the
2 question was solely about the best way to accommodate
3 these various interests. And I think that was
4 reflected in the type of proposal Mr. Margolis was
5 making, as an attorney, to what Mr. Nussbaum had been
6 considering.

7 Q During the meeting in Mr. Nussbaum's
8 office that afternoon, July 21, was there any
9 discussion about interviews of White House counsel's
10 office employees that would take place the next day?

11 A I think I testified earlier that I didn't
12 recall that, or exactly when that occurred. Mr.
13 Giuffra showed me a document earlier in which there
14 was a report made that that topic did come up at a
15 meeting on the afternoon of the 21st. I don't have a
16 personal recollection that that was the particular
17 time that it came up, but it might have.

18 Q Do you have a recollection that it did
19 come up at some point before the morning of the 22nd?

20 A I just don't remember exactly when it
21 first came up.

22 Q Well, do you know whether at any time

1 before the interviews actually began on July 22,
2 there was discussion with Park Police officials and
3 White House officials as to whether White House
4 attorneys would be present during those interviews?

5 A I think I said earlier today that I
6 believe it was the 21st. I was involved in a
7 conversation with Park Police officials in which I
8 indicated that Mr. Sloan and I were intending to sit
9 in on the interview of Mr. Nussbaum that I believe
10 took place on the 21st, although I'm not positive.

11 Q What about the intentions of having White
12 House officials sitting in on interviews of the
13 secretaries in the White House counsel's office?

14 (Discussion off the record.)

15 MR. BARRON: Let me just suggest something
16 to you, in the interest of complete fairness.

17 I think we were a little tough on Mr.
18 Giuffra on going over areas that the witness had
19 already covered. I think that we'd just as soon not
20 cover questions and answers that he's already
21 confirmed.

22 MR. KRAVITZ: I'm certainly not trying to

1 be repetitive. I may have spaced out during this
 2 subject. I didn't recall your being asked or
 3 answering questions on this specific subject.

4 I do think I have a right to go back over
 5 things if I need to. I obviously have no intention
 6 of asking the same question.

7 MR. GIUFFRA: That is the standard
 8 procedure at these depositions, and sometimes there
 9 is a bit of repetition with the minority and majority
 10 staff.

11 MR. BARRON: Can I hear the pending
 12 question back?

13 (The reporter read the record as
 14 requested.)

15 MR. BARRON: The pending question is
 16 whether or not Park Police were aware before these
 17 interviews started. Can you restate the question?

18 MR. KRAVITZ: Why don't I rephrase the
 19 question.

20 BY MR. KRAVITZ:

21 Q To your knowledge, before the interviews
 22 of the White House counsel's secretaries began on

1 July 22, 1983, had there been discussions between
 2 White House and Park Police officials in which White
 3 House officials told Park Police officials that White
 4 House counsel attorneys would be present in these
 5 interviews?

6 A I don't know if there were separate
 7 discussions on that topic. Mr. Sloan and I had sat
 8 in on the interview of Mr. Nussbaum, which took place
 9 before those interviews, and no objections to our
 10 presence were raised -- or my presence.

11 If any objections were being made to White
 12 House counsel attorneys sitting in on the interviews
 13 of the secretaries and Mr. Castleton, those
 14 objections were not made in my presence, either at
 15 the start or during or after those interviews took
 16 place.

17 Q On the 22nd of July?

18 A If they took place on the 22nd of July.
 19 Again, I'm not positive whether it's the 21st or the
 20 22nd when those four staff people were interviewed.

21 Q Which interviews did you sit in on
 22 involving the White House counsel secretaries or Mr.

1 Castleton?

2 A I believe I sat it on Deb Gorham and Mr.
3 Castleton's interviews.

4 Q What was your participation in those
5 interviews, other than just being present?

6 A I took notes.

7 Q Did you say anything?

8 A I don't recall saying anything during
9 those interviews, although it's possible that I said
10 something I don't remember.

11 Q Did you object to any of the questions
12 being asked, either to Ms. Gorham or to Mr.
13 Castleton?

14 A I do not have a recollection of objecting
15 to anything.

16 Q Did you instruct either Ms. Gorham or Mr.
17 Castleton not to answer any questions?

18 A I don't believe so.

19 Q Was there a time after Ms. Gorham's
20 interview ended that Ms. Gorham spoke with law
21 enforcement officials again to provide additional
22 information?

250

1 A Yes.

2 Q Were you present with Ms. Gorham at that
3 time?

4 A Yes.

5 Q Can you tell us how that came about?

6 A After the review in Mr. Foster's office on
7 the afternoon of the 22nd, I told Mr. Sloan -- and I
8 think also Mr. Nussbaum -- that something Deb Gorham
9 had mentioned to us when we had spoken to her had not
10 come up in her interview with the Park Police; that
11 it seemed to me that it might be something the Park
12 Police would consider relevant to their inquiry. And
13 I asked if Mr. Sloan and Mr. Nussbaum agreed that it
14 might make sense to try to create an opportunity for
15 Ms. Gorham to share that information with the people
16 who had interviewed her. Mr. Sloan agreed, and I
17 think Mr. Nussbaum also agreed.

18 And so, at the time when the Park Police
19 agents were still in Mr. Foster's office, I asked Ms.
20 Gorham to come into Mr. Nussbaum's office. I told
21 her that this matter had not come up, that she had
22 mentioned in discussions in the counsel's office, and

1 asked her if she would be comfortable telling the
2 people who had interviewed her about that. She said
3 yes, and so I asked the people -- I don't know
4 whether it was just from the Park Police or also from
5 the FBI -- to come into Mr. Nussbaum's office.

6 I think I explained to them the
7 circumstances, and I believe Ms. Gorham told them
8 what I understood to be the information that had not
9 come out during her interview earlier that day.

10 Q Was this information something that Ms.
11 Gorham had told you and Mr. Sloan the night before,
12 when you met with her in anticipation of your
13 interview?

14 A Well, again, I don't know whether it was
15 the day before that we spoke to her. I don't know
16 that it was in anticipation of an interview as much
17 as to find out if anyone in the office knew anything.
18 But it had been something that had come up in
19 discussions we had had with her prior to the
20 interview.

21 Q And was your purpose in getting Ms. Gorham
22 back together with law enforcement officials to make

1 sure that the law enforcement officials had as much
2 information as possible?

3 A It was to make sure that the law
4 enforcement officials knew at least everything we
5 knew that appeared to be pertinent to their
6 investigation, or at least something that they might
7 consider pertinent to their investigation.

8 Q What was the information that Ms. Gorham
9 ultimately provided to the law enforcement officials
10 in her second meeting with them?

11 A I don't recall the details, but I believe
12 it had to do with a personal financial matter
13 relating to Mr. Foster that Ms. Gorham was aware of.

14 Q In your opinion, was this information
15 relating to this personal financial matter that Ms.
16 Gorham was aware of -- was that information
17 responsive to any questions that had been posed to
18 Ms. Gorham during her initial interview by law
19 enforcement officials?

20 A I don't recall having the sense that Ms.
21 Gorham had failed to answer the questions she was
22 asked. I think that this was more of a matter of

1 something that had not come up, but that seemed like
2 it would have been something that the Park Police
3 might have asked about. And it was really just a
4 matter of trying to facilitate their ability to
5 obtain information from her.

6 (Pause.)

7 Q I want to direct your attention to the
8 actual review of the contents of Mr. Foster's office
9 that took place on July 22, 1993.

10 You testified that you understood, and I
11 think that you thought everyone else understood, that
12 as Mr. Nussbaum went through the various materials in
13 Mr. Foster's office, that the law enforcement
14 officials present could identify any material in the
15 file as something that they wanted to look at at a
16 later time. Is that right?

17 A I understood that. It was my impression
18 that that was understood by other people as well.

19 Q What gave you the impression that the
20 other people in Mr. Foster's office that afternoon
21 also understood that they could identify as being
22 something that they wanted to look at at some later

1 time?

2 A Because no restrictions were placed on
3 what these law enforcement officials could request to
4 see, and I don't believe that any request that they
5 made was denied during that process. And it's my
6 understanding that everything that was requested
7 during that process was ultimately produced to them
8 in some way.

9 Q What is your understanding as to what
10 happened to the pile of materials that had been
11 identified by law enforcement officials on July 22 as
12 being materials that they wanted to see? What
13 happened to those materials at the end of the office
14 review that day?

15 A I don't know whether they stayed in the
16 office or whether they were moved to another
17 location. But my understanding is that Mr. Nussbaum
18 and Mr. Sloan made arrangements to make those
19 documents available in whatever way they ultimately
20 were made available.

21 Q And it's your understanding that every
22 single document that was identified by the law

1 enforcement official on July 22 as a document that
2 the law enforcement official wanted to see was
3 ultimately shown to the Park Police?

4 A I don't have personal knowledge of that.
5 That is my understanding.

6 Q Now, you testified that you were not
7 certain, but you didn't believe that there were any
8 documents on the coffee table in Mr. Foster's office
9 when you were in his office on the afternoon of July
10 22, 1993.

11 A That's correct.

12 Q Does it refresh your recollection in any
13 way to know that Ms. Pond testified in her deposition
14 that, when she went into Mr. Foster's office early in
15 the morning of July 21, 1993, she -- I think her word
16 was "squished together" some papers that were on the
17 coffee table in Mr. Foster's office, and actually
18 turned them upside down?

19 A This is the first time I've heard that.

20 Q Does that refresh your memory in any
21 regard as to what you may or may not have seen on the
22 coffee table on the afternoon of the 22nd of July?

1 A No, it does not.

2 (Pause.)

3 Q What was Mr. Sloan's tone of voice on the
4 afternoon of July 22, 1993, when he asked the FBI
5 agent whether he was trying to look at documents?

6 A I think it was a tone that was cautiously
7 serious, but also part friendly, to the extent that
8 it was more of an inquiry that was meant to find out
9 if there really was a problem. I don't think his
10 tone reflected an assumption that there was something
11 wrong happening as much as just checking -- in a
12 serious way, but it wasn't nasty or anything.

13 Q Would you characterize what Mr. Sloan said
14 to the FBI agent as accusatory?

15 A I don't know what is meant by
16 "accusatory." But Mr. Sloan did ask the agent if he
17 was attempting to read documents on Mr. Foster's
18 desk.

19 Q What was the FBI agent's response?

20 A I don't recall the exact words. But my
21 understanding was that the agent was denying the
22 suggestion that he was trying to read the documents,

1 and I think he may have followed that up with some
2 other comments. But I don't recall.

3 (Pause.)

4 Q When you spoke with Bob Barnett on July
5 23, 1993, on the airplane ride back from Mr. Foster's
6 funeral to Washington, did Mr. Barnett indicate to
7 you where the files were presently located that he
8 was going to be receiving from the White House?

9 A I don't think he did.

10 Q Did Mr. Barnett tell you during that
11 conversation on the airplane which files it was that
12 he was going to be receiving?

13 A No, he did not. He didn't specify
14 particular files.

15 Q Did he specify any particular subject
16 matter, such as personal matters of the Clintons or
17 financially-related matters of the Clintons?

18 A I don't recall him specifying any content-
19 related descriptions. It was my impression that he
20 was talking about documents from Vince Foster's
21 office, but I'm not sure what relationship what he
22 told me has to what may or may not have ever gone to

258

1 Williams and Connolly.

2 (Pause.)

3 Q When you were conducting the inventory of
4 the files in Mr. Foster's office on July 26, 1993,
5 did you notice whether there were indices or lists of
6 files in the front of any of the drawers or file
7 cabinets you were reviewing?

8 A I don't recall anything like that.

9 Q Did you look inside any of the files as
10 you went through the office that day?

11 A I may have looked inside some of the
12 files, because I indicated that some were empty. And
13 so I should think I certainly looked to see if the
14 files had materials in them. I don't know to what
15 extent I may have looked at particular files, but the
16 purpose of the project was to figure out the subject
17 matters of the files rather than details within those
18 subject matters of what the file contained.

19 Q Were any of the files untitled?

20 A I think that I tried to write down on the
21 inventory something about each file. I just don't
22 remember whether I wrote down everything on the

1 cover. But whatever titles were or were not on the
2 files, I tried to record in the inventory.

3 Q Is it fair to say that some of the
4 information that shows up on your inventory, which is
5 Z1 through 6, comes from whatever certain files were
6 titled, and some of the information on the inventory
7 may come from some kind of quick review of the
8 materials inside the file, so that you could describe
9 what the file was?

10 A I don't think that that's accurate. I
11 think what I tried to do was record the title of the
12 files as I found it. I don't have a recollection of
13 any untitled files. And so, unless the inventory
14 shows that there was an untitled file, I don't know
15 that I would have looked at the contents to come up
16 with a name for the file.

17 Q Did you give a copy of the inventory to
18 Mr. Nussbaum after you completed it?

19 A I did not.

20 Q Did you ever give a copy of the inventory
21 to Mr. Nussbaum?

22 A I don't know at what time the special

1 counsel request for documents was made the first
2 time. I believe that was the first time that I
3 showed the inventory to Mr. Klein, and I don't know
4 whether Mr. Nussbaum was still the White House
5 counsel at that point. The inventory may have been
6 shown to him at that time if he was still White House
7 counsel by Mr. Klein. But I just don't recall the
8 timing relative to Mr. Nussbaum's departure.

9 Q Was it in March of 1994 that the
10 independent counsel -- or the special counsel,
11 actually, at that point -- first subpoenaed documents
12 from the White House?

13 A I don't remember.

14 Q Does that sound right to you?

15 A It doesn't sound wrong, but I just don't
16 remember.

17 Q Let me ask you this.

18 Is it true, then, that between July 26,
19 1993, and whenever it was that the special counsel
20 first subpoenaed documents from the White House, that
21 you were the only person who had the inventory that
22 you prepared on July 26, 1993?

1 A I believe that is correct.

2 Q Was there any reason for that? Weren't
3 you doing this project for Mr. Nussbaum?

4 A I was doing this project at Mr. Nussbaum's
5 request. I believe that after the note was
6 discovered, and all attention focused on the note,
7 Mr. Nussbaum --

8 (Pause.)

9 -- took whatever steps he took going
10 forward with respect to the contents of Mr. Foster's
11 office without asking to see the inventory I had
12 compiled.

13 Q Did you ever tell Mr. Nussbaum that you
14 actually had a completed inventory?

15 A I may have told him on the day that I did
16 it. But for the next several weeks, attention was
17 very focused on the finding of the note, the press
18 inquiries, and other investigations relating to that.
19 And I think by the time those matters were no longer
20 taking up the time of many people in the White House,
21 Mr. Nussbaum may no longer have felt a need for the
22 inventory that I had prepared.

262

1 But whatever he felt, he did not ask me
2 for it, and there was never an occasion where I gave
3 it to him.

4 MR. BARRON: Off the record.

5 (Discussion off the record.)

6 (Recess.)

7 MR. KRAVITZ: Back on the record.

8 BY MR. KRAVITZ:

9 Q Mr. Neuwirth, you testified about what you
10 perceived about Mr. Nussbaum's emotional condition on
11 the night of July 20, 1993, when you spoke to him
12 over the telephone. Can you describe for us what Mr.
13 Nussbaum's emotional state appeared to be during the
14 day on July 21, 1993?

15 A Mr. Nussbaum was very sad. Mr. Nussbaum
16 spoke at the gathering in 450 of the Old Executive
17 Office Building for the White House staff. The
18 President also spoke.

19 I think Mr. Nussbaum cried at the end of
20 his talk there to the White House staff. I think at
21 the same time Mr. Nussbaum was forced to confront the
22 very difficult issues that we've talked about today,

1 and I don't think he really got a chance to mourn the
2 passing of a very close colleague, because he had to
3 deal with those issues so promptly.

4 Q You testified earlier that on July 26,
5 1993, when you picked up Mr. Foster's brief bag and
6 carried it over to a box of materials that you had
7 put together, the brief bag, I think in your words,
8 "looked empty."

9 Is that accurate? Do you remember
10 testifying to that?

11 A Yes.

12 Q What was it about the brief bag to you
13 that made it look empty?

14 A I didn't see any contents in the bag
15 sticking out of the top, and when I picked it up it
16 felt empty.

17 Q Was the brief bag open at the top?

18 A It was not open in a way that I could see
19 into it. But I didn't see anything sticking out of
20 the top, and as I said, I didn't recall the bag
21 having a zipper or anything else that would keep it
22 closed. So I don't think it was sealed shut in any

1 way on top, but I didn't see anything sticking out of
2 it.

3 Q Did you look inside the brief bag when you
4 picked it up?

5 A I did not look inside the bag at any point
6 prior to the time when I was turning it to fit into
7 the box and pieces of paper fell out.

8 (Pause.)

9 Q Who in your presence touched the torn-up
10 scraps, the torn note, at any time after you
11 discovered it?

12 A Mr. Nussbaum and I touched it to put it
13 together. I don't know if anybody else actually
14 touched the original pieces of paper that made up the
15 note.

16 Q You don't remember Mr. Burden touching the
17 piece of paper?

18 A I remember that Mr. Burden read the note,
19 but I don't know if he read Mr. Nussbaum's
20 transcription of the note, and I don't remember
21 whether he actually touched the pieces of paper.

22 Q Did Mrs. Clinton touch the pieces of paper

1 when she was in Mr. Nussbaum's office on the night of
2 July 26?

3 A I don't believe she did.

4 Q Do you know whether either of your palms
5 ever came into contact with any of the pieces of the
6 note?

7 A I don't know.

8 Q What about Mr. Nussbaum? Do you know
9 whether either of his palms ever came into contact
10 with any of the pieces of the note?

11 A I don't know. In the case of me, I don't
12 remember. In the case of Nussbaum, I don't know.

13 Q Mr. Giuffra asked you some questions about
14 what people at the White House talked about, or what
15 the note might have meant, after its discovery. Let
16 me just ask you this in that regard.

17 Did you ever become aware that, at some
18 time before Mr. Foster's death, his wife asked him to
19 make a list of things that were bothering him?

20 MR. BARRON: When you ask, "Did you ever
21 become aware," at any point in time up to the point
22 that he's sitting here today?

266

1 MR. KRAVITZ: Yes.

2 THE WITNESS: I have no personal knowledge
3 of that, and I have never been informed of that by
4 anyone with personal knowledge of it. I have read
5 newspaper reports which suggest it, and I may have
6 heard talk in the White House about it. But I
7 really, beyond that, don't have any sense of whether
8 that's accurate.

9 (Pause.)

10 BY MR. KRAVITZ:

11 Q Did Mr. Nussbaum go through a burn bag in
12 Vincent Foster's office on July 22, 1993 when all of
13 the law enforcement officials were there at the
14 office with you?

15 A I don't remember.

16 Q Just one more question.

17 You testified that at some point -- strike
18 that.

19 You testified that at some point on July
20 22, 1993, Mr. Nussbaum told you that he had had a
21 telephone conversation with Susan Thomases. Is that
22 right?

1 A Yes.

2 Q Where in the course of events, or when in
3 the course of events was it that Mr. Nussbaum told
4 you he had spoken with Ms. Thomases?

5 A I don't remember whether it was before or
6 after the review in Mr. Foster's office.

7 Q Do you remember whether it was before or
8 after the meeting in Mr. McLarty's office earlier
9 that day that you testified about?

10 A I think it would have been after that
11 meeting.

12 Q Did Mr. Nussbaum indicate to you when it
13 was that he spoke with Ms. Thomases?

14 A If he did, I don't remember what he said
15 about the timing of the conversation.

16 MR. KRAVITZ: That's all I have. Thanks.

17 MR. GIUFFRA: Just a couple questions.

18 FURTHER EXAMINATION

19 BY MR. GIUFFRA:

20 Q Did Mr. Nussbaum ever indicate to you that
21 he took the First Lady's and Mrs. Thomases' views
22 into account with regard to the process for review of

1 documents in Mr. Foster's office?

2 A He did not discuss that with me.

3 Q Directing your attention to July 26, the
4 discovery of the note, was Mrs. Clinton in a position
5 to read the note when she entered Mr. Nussbaum's
6 office?

7 A I was not standing where she was, so I
8 don't know.

9 Q Do you know how close she ever came to the
10 proximity of the note?

11 A I don't remember how close she was
12 physically to the document.

13 Q Do you recall whether she ever said
14 anything about not wanting to get involved in the
15 question of how to handle the note?

16 A She indicated that she was not going to
17 participate in the conversation that began when Mr.
18 McLarty called back with Mr. Gergen from Chicago.
19 And she left the room at that time.

20 Q Did either you or Mr. Nussbaum have any
21 concern that by touching the note, you might be
22 contaminating possible evidence?

1 A No.

2 Q You testified that on July 21, 1993, I
3 believe your words were "no final decision" had been
4 reached with regard to the process that would be used
5 for review of the documents in Mr. Foster's office.
6 Your use of the words "no final decision" -- was
7 there a tentative decision reached?

8 A In this case, I don't think that there
9 was. If there was, no one told me about it. I think
10 that people were grappling with a very difficult
11 problem, and I don't think that that problem had been
12 resolved. And I think that that was reflected in the
13 discussions that took place on the morning of the
14 22nd.

15 MR. GIUFFRA: I have no further questions.

16 We would ask that you keep your testimony
17 here confidential and not disclose it. That's the
18 process we've been asking other witnesses to follow
19 in order to maintain the integrity of the
20 investigation.

21 I'd like to thank Mr. Barron for coming.

22 You've been very helpful and courteous. And Mr.

270

1 Neuwirth for coming and being cooperative. Thank you
2 very much.

3 (Whereupon, at 5:40 p.m., the taking of
4 the instant deposition ceased.)

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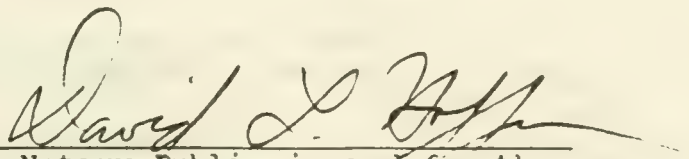
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STEPHEN NEUWIRTH

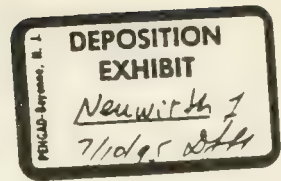
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271

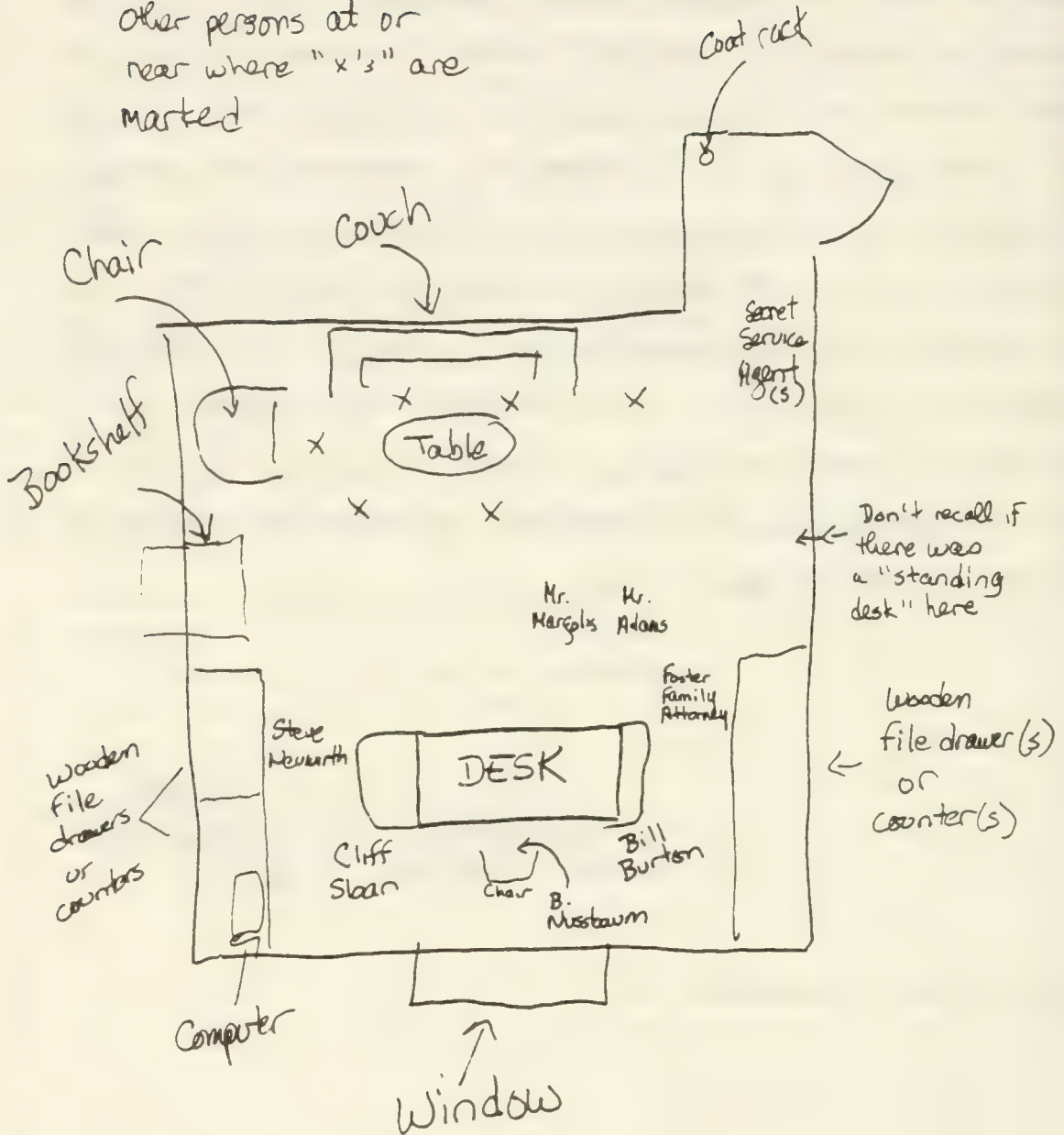
I, David L. Hoffman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
District of Columbia

My Commission Expires 6/30/00



other persons at or
near where "x's" are
marked



**DEPOSITION OF WILLIAM H. KENNEDY
IN RE: S. RES. 120**

TUESDAY, JULY 11, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of WILLIAM H. KENNEDY, called for examination pursuant to notice of deposition, at 9:50 a.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PAUL V. CASTELLITTO, Esq.
Sharp & Lankford
1785 Massachusetts Avenue, NW
Washington, DC 20036
On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|----------------------|-------------|
| William H. Kennedy | |
| by Mr. Johnson | 3 |
| by Mr. Kravitz | 105 |

EXHIBITS

| | |
|---------------------------------|------------|
| William H. Kennedy | |
| DEPOSITION NUMBER | IDENTIFIED |
| Exhibit Z412 through Z415 | 98, 3405 |

1 PROCEEDINGS

2 Whereupon,

3 WILLIAM H. KENNEDY

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q Good morning, Mr. Kennedy. We've met
9 briefly off the record. Let me just officially
10 reintroduce myself. My name is Everett Johnson and
11 I'm one of the attorneys representing the Republican
12 members of the special Whitewater committee. What
13 brings us here this morning is Senate Resolution
14 Number 120, which creates the special committee and
15 authorizes its investigation into certain matters
16 which the public has come to know generally as
17 Whitewater.

18 Specifically, the topic of discussion this
19 morning is the investigation into Mr. Foster's death
20 on or about July 20, 1993 and more specifically into
21 the handling of the documents in Mr. Foster's
22 office. So the questions that I ask you and the

4

1 questions that Mr. Kravitz will ask you are intended
2 to touch generally on that topic.

3 Let me ask you, just preliminarily, whether
4 or not you've ever been deposed before? And I don't
5 mean in connection with this, but just ever.

6 A More times than I care to remember.

7 Q Let us -- I'll just remind us both of a
8 couple of things that will make Ms. Baker's job a
9 little easier. As you know, she makes a verbatim
10 transcription. In order for her to do that, we need
11 to not speak simultaneously and you need to answer
12 the questions verbally rather than with gestures or
13 other sorts of nonverbal communication.

14 If you need to confer with your counsel or
15 take a break, feel free to do so. And if a question
16 is not clear in some way, I'm going to rely you on to
17 tell me that.

18 A Okay.

19 Q Did you have an opportunity to meet with
20 anybody to prepare for your deposition today?

21 A Just my counsel.

22 Q That's Mr. Castellitto?

1 A Yes.

2 Q Was anyone else present during that
3 meeting?

4 A No.

5 Q I take it you have not conferred with White
6 House counsel or anyone from the White House in
7 preparation for your deposition?

8 A That's correct.

9 Q Can you take just a minute or two and tell
10 us about your professional background.

11 A What would you like to know?

12 Q Just start with graduation from college.

13 A University of Arkansas, 1976.

14 Q And did you attend law school after that?

15 A Excuse me. I did that backwards.

16 University of Arkansas, 1973. University of Virginia
17 law school in 1976. I apologize for that.

18 Q That's all right. Anybody who went to UVA
19 makes me happy.

20 MR. JOHNSON: You, too, I expect?

21 MR. KRAVITZ: No.

22 BY MR. JOHNSON:

1 Q After graduating from law school, did you
2 undertake full-time employment?

3 A I did. Rose Law Firm, Little Rock,
4 Arkansas.

5 Q When did you begin employment at the Rose
6 Law Firm?

7 A 1976.

8 Q Did you begin as an associate in that firm?

9 A Yes.

10 Q And I take it you took the Arkansas Bar
11 examination?

12 A I did.

13 Q How long did you remain in the employ of
14 the Rose Law Firm?

15 A There's a complicated answer to that
16 question. I stayed at the Rose Law Firm through all
17 of 1976. In January of 1977, I became a professional
18 staff member on the U.S. Senate Committee on
19 Appropriations, then chaired by John McClellan;
20 served in that capacity -- excuse me, my title was
21 counsel, not professional staff member. Served in
22 that capacity through the middle of November of

1 1977. Senator McClellan passed away.

2 I became chief legislative assistant to
3 U.S. Senator Kaneaster -- that's K-a-n-e-a-s-t-e-r --
4 Hodges, served in that capacity through all of 1978,
5 returned to the Rose Law Firm in 1979. Been with the
6 Rose Law Firm until January of 1993, at which point I
7 became associate counsel to the President serving in
8 the White House counsel's office, rejoined the law
9 firm in March of 1995.

10 Q When you returned to the Rose Law Firm in
11 1979, did you also have the title of associate at
12 that time?

13 A Yes.

14 Q Did there come a time when you were elected
15 to the partnership of the Rose Law Firm?

16 A Yes.

17 Q What year was that?

18 A Don't hold me to that. It was either '80
19 or '81. I'm not sure.

20 Q During your period of employment at the
21 Rose Law Firm, both as an associate and later as a
22 partner, did you have any involvement with then

1 Governor Clinton? For example, did you work for the
2 Clinton reelection campaigns in Arkansas or anything
3 of that nature?

4 A Repeat the time period again.

5 Q When you were in the Rose Law Firm from '79
6 to '93.

7 A No, I didn't work directly for the
8 campaign. I may have contributed, but huh-uh.

9 Q In your time at the Rose Law Firm, did you
10 work with Mrs. Clinton?

11 A Yes.

12 Q How closely would you say you worked
13 together?

14 A Pretty closely.

15 Q Were you a litigator?

16 A No.

17 Q What discipline did you practice?

18 A Corporate and securities lawyer with a
19 focus on transactions.

20 Q What discipline did Mrs. Clinton practice
21 in at the Rose Law Firm?

22 A She was a litigator.

1 Q Just generally, let me just pick a year out
2 of the air. Take 1990 or 1991. Approximately how
3 many partners were there in the Rose Law Firm at that
4 time?

5 A 30 maybe, between 25 and 30, if I had to
6 guess.

7 Q Mr. Kennedy, I know you said you left the
8 White House counsel's office in March of 1995. Did
9 you say where you returned?

10 A No, you didn't hear me correctly. I
11 rejoined the law firm in 1995, March. I left the
12 White House counsel's office in the first or second
13 week of December 1994.

14 Q Were you employed between that time and
15 rejoining the law firm in March of 1995?

16 A No. I performed some legal services for
17 clients, but other than that, I was not affiliated
18 with anybody.

19 Q And you are a partner in the Rose Law Firm
20 today, I take it?

21 A No. I am of counsel to the Rose Law Firm.

22 Q Are you presently employed or

1 professionally engaged other than at the Rose Law
2 Firm?

3 A No.

4 Q So you work full-time as of counsel?

5 A Yes.

6 Q During your years with the Rose Law Firm
7 and before coming to work at the White House in
8 January 1993, I take it you also worked closely with
9 Mr. Foster?

10 A Yes.

11 Q Let me focus, for purposes of the next few
12 questions, on the period of time before President
13 Clinton's inauguration in January 1993, so therefore,
14 sometime in 1992, up to and including the
15 inauguration. What role, if any, did you have in the
16 Clinton campaign?

17 A I didn't have any official role in the
18 Clinton campaign.

19 Q Did you serve in any unofficial capacity,
20 as a consultant or volunteer?

21 A Well, that's a complicated question. I
22 mean, when you say "unofficial capacity," I

1 contributed to the campaign. I think the way you
2 phrased that question, the answer is no.

3 Q Did you have any role in the transition
4 team?

5 A No.

6 Q Would you tell us how it is that you got
7 the job that you did get in the administration.

8 A I was basically invited to come.

9 Q By whom?

10 A Mrs. Clinton.

11 Q When do you recall that you and
12 Mrs. Clinton first discussed your joining the
13 administration?

14 A I don't recall precisely. It was either
15 late in December or it may have been in January. I
16 don't recall precisely. That would have been
17 1992/1993.

18 Q Did you join the administration immediately
19 after the inauguration in 1993?

20 A I did not.

21 Q As precisely as you can recall, when did
22 you first begin working in the White House?

1 A I went on the payroll February the 10th,
2 1993.

3 Q Are you distinguishing that from the day
4 you actually started work and --

5 A I think I came -- my first visit to
6 Washington would have been around the 2nd or 3rd of
7 February, at which point I accepted the job offer to
8 work in the counsel's office. And there would have
9 been both activities winding up my law practice and
10 then starting to gear up to work in the counsel's
11 office between the 2nd and 3rd and 10th.

12 Q At that time, when you began work in the
13 White House counsel's office, to whom did you report?

14 A Bernard Nussbaum.

15 Q And did you report through Mr. Foster to
16 Mr. Nussbaum or did you report directly to
17 Mr. Nussbaum?

18 A Usually through Mr. Foster.

19 Q What generally were your job duties as
20 assistant White House counsel?

21 A I ran the clearance process for
22 presidential nominees and appointees. I also headed

1 up for the counsel's office the White House counsel
2 personnel security operation.

3 Q What is that, the White House personnel
4 security operation?

5 A It's the same thing you have here in the
6 Senate. It's the process by which people are issued
7 passes.

8 Q And when you say you ran the clearance
9 process for presidential appointees, without
10 reference to any particular appointee, can you
11 describe generally how that process works.

12 A We were responsible for, once an individual
13 had been selected by presidential personnel, getting
14 the necessary forms out and back, reviewing that
15 information, doing necessary follow-up, getting the
16 necessary information to the FBI and the other
17 agencies involved in the process, reviewing the
18 results of their investigations, dealings with the
19 Hill. If you were dealing with a PAS, presidential
20 appointee, that's subject to Senate confirmation.

21 Q I sometimes hear the term "vetting" to
22 describe a process like that. Is that sort of a

1 generic description?

2 A That's a good word. That's a good word.

3 Q Who else within the White House counsel's
4 office other than yourself was involved in that
5 process?

6 A Well, that's a difficult question to answer
7 because there's a shift in cast of characters. I
8 mean, we used people that -- we used some detailees.
9 We used some people that were there initially that
10 found jobs elsewhere. We used various members of the
11 White House counsel's office who also found jobs
12 elsewhere. The point is, without you giving me a
13 particular point in time, it would be a changing
14 list.

15 Q Let me refocus the question just on sort of
16 senior staff. Were you the most senior person in the
17 White House counsel's office with responsibility for
18 this process?

19 A That would be a fair statement.

20 Q What involvement, if any, did Mr. Foster
21 have in this vetting process?

22 A Well, as I said, I would report to him.

1 Q Would you maintain files -- and by "you," I
2 mean the White House counsel's office for purposes of
3 this question -- maintain vetting files or other
4 collections of data on presidential nominees?

5 A Yes.

6 Q Where physically, Mr. Kennedy, were those
7 maintained?

8 A Again, depending on the time, some would be
9 down in presidential records and some would be in
10 offices of the White House counsel.

11 Q So there would be -- from time to time
12 there would be vetting files in your office?

13 A That's correct.

14 Q To the best of your knowledge, would there
15 also from time to time be vetting files in
16 Mr. Foster's office?

17 A Rarely.

18 Q What about in Mr. Nussbaum's office?

19 A Rarely.

20 Q Can you think of any occasion that comes to
21 mind when Mr. Foster did have a vetting file in his
22 office, to your knowledge?

1 A Well, Vince was involved in the selection
2 of some Supreme Court nominees, so there would be a
3 vetting file there, for example.

4 Q Any other thing come to mind?

5 A Well, from time to time, if there was a
6 particular problem with a nominee, they would
7 sometimes send the original material over so he could
8 look at it.

9 Q You were describing to me your principal
10 job duties, and you mentioned that you ran the
11 clearance process, which we've been talking about, in
12 the personnel security operations. Anything else
13 that you had primary lead responsibility for in the
14 White House counsel's office?

15 A No, I didn't -- I had projects from time to
16 time, but those were the two main areas of
17 responsibility.

18 Q Did you have a close working relationship
19 with Mr. Foster in the White House counsel's office?

20 A Yes.

21 Q Would you also describe yourself as good
22 personal friends?

1 A Yes.

2 Q Mr. Kennedy, how familiar were you with the
3 contents of Mr. Foster's office before Mr. Foster
4 died on July 20, 1993?

5 A Not -- I mean, I did not know. I could
6 tell you there were personal pictures on the walls,
7 that he had books in a bookcase, desk, chairs and
8 whatnot, but as far as what I think you want to know,
9 source and content and kinds and types of documents,
10 no.

11 Q Let me just tie it down for a second or
12 two, if I could. Did you know, for example, that he
13 kept documents relating to the Whitewater Development
14 Corporation in his office?

15 A This is a problem that you all have seen
16 over and over again. Did I know at the time? No.
17 Did I learn about it subsequently from press
18 reports? Yes.

19 Q When do you think you first learned about
20 it?

21 A It would have been the time of the first
22 press articles, whenever that was. I do not know.

1 Q Did you know -- I realize we may run into
2 the same answer a fair number of times. Did you know
3 that Mr. Foster maintained files in his office
4 relating to the Clinton family personal finances?

5 A I knew that Mr. Foster was working on a
6 blind trust which, of necessity, involved their
7 financing.

8 Q So you assumed on that basis that there
9 must be documents in there relating to it?

10 A I'm not making any assumptions, but I mean,
11 I do know that he was working on the establishment of
12 a blind trust for the President and the First Lady.

13 Q Did you ever discuss with Mr. Foster the
14 topic of Whitewater?

15 A No.

16 Q Not during the campaign or any other time?

17 A Let's be specific here because this is very
18 often a problem. When people say "Whitewater," it
19 can mean almost anything. Are you talking about
20 Madison Guaranty? Are you talking about the
21 Whitewater real estate development? Are you talking
22 about the Senate Select Committee on Whitewater? I

1 need precision in order to answer that question.

2 Q What about the Whitewater real estate
3 development?

4 A The only conversation that I had with
5 Mr. Foster during the campaign was at the time of The
6 New York Times story on the Whitewater development.
7 I think Vince, although it may have been Web Hubbell,
8 told me that there were rumors around involving this
9 Whitewater real estate development in that there was
10 going to be a newspaper story written about it that
11 was probably going to be adverse to the Clintons and
12 possibly to the law firm. That was the only
13 conversation that I can recall involving Vince and
14 Whitewater, the real estate development.

15 Q Did Mr. Foster say what those rumors were?

16 A Just what I said. He just let me know that
17 there was evidently a reporter digging around trying
18 to get information on the real estate development.

19 Q You don't recall him saying anything more
20 than that, though?

21 A Huh-uh.

22 Q What about Madison Guaranty?

20

1 A At the same time, he mentioned that this
2 newspaper story would also involve Madison Guaranty
3 and possibly the firm's representation of Madison.
4 This was all one conversation.

5 Q Just in an effort to continue to be
6 specific, did you ever have any conversations with
7 Mr. Foster about the McDougals?

8 A No.

9 Q Let me just redefine Whitewater for the
10 moment to include those three topics that we've just
11 discussed.

12 A I apologize for that, but it's necessary
13 because people tend to blur it together, and it's
14 separate and distinct areas.

15 Q Just for efficiency in questions, let me
16 loop the three things you just described back
17 together, and if for clarity in the answer we need to
18 separate them, we can certainly do that.

19 A Okay.

20 Q Did you ever discuss Mr. Foster's
21 involvement in these three topics with either the
22 President or Mrs. Clinton?

1 A No.

2 Q To the best of your knowledge, did you ever
3 discuss Whitewater, as you and I have just defined
4 it, with the President or Mrs. Clinton?

5 A Yes.

6 Q What do you recall about those
7 conversations? And if we need to break it out, tell
8 me and we'll try --

9 A I want to talk to my counsel for a second.
10 We'll be right back.

11 (Witness conferred with counsel.)

12 THE WITNESS: Would you read back his
13 question, please.

14 (The reporter read the record as requested.)

15 MR. CASTELLITTO: Just so the record is
16 clear, that's -- that would plainly be a privileged
17 conversation, given the nature of Bill's relationship
18 with the Clintons, working in his capacity as a
19 lawyer for them. But we understand that the Clintons
20 have waived that privilege and therefore, he will be
21 permitted to answer the question.

22 MR. KRAVITZ: I have a question actually on

1 the relevance of this subject matter.

2 MR. JOHNSON: I think what we're trying to
3 ascertain, Neal, is what, if anything, people knew at
4 the time about what was in Mr. Foster's office. And
5 even though Mr. Kennedy has testified that he didn't
6 personally know, it's possible that in his
7 conversations with others, it may shed light on what
8 they knew. For example, the White House has publicly
9 taken the position that Whitewater was not an issue
10 on anyone's agenda in July of 1993.

11 THE WITNESS: If that is the relevant time
12 frame, the answer to the question is no.

13 BY MR. JOHNSON:

14 Q No, actually I meant ever in the question.

15 MR. KRAVITZ: I actually think that the
16 question ought to be limited to the relevant time
17 frame. I mean, if Mr. Kennedy has spoken to the
18 Clintons in 1994 about Whitewater Development
19 Corporation or Madison Guaranty or the McDougals, I
20 fail to see how that could have any relevance to the
21 handling of documents in Mr. Foster's office as of
22 late July 1993.

1 MR. JOHNSON: The Clintons have been making
2 public statements about the documents in Mr. Foster's
3 office, including and up to last weekend. I'm not
4 sure, after Mr. Foster's death, if it would make it
5 irrelevant. Why don't we hear the answer.

6 THE WITNESS: These conversations occurred
7 in 1991, nowhere near any of the events that the
8 Committee is concerned about.

9 BY MR. JOHNSON:

10 Q How many conversations are we describing?

11 A Two, possibly three.

12 Q With the President or Mrs. Clinton or both?

13 A Mrs. Clinton.

14 Q Can you tell us what you recall, if
15 anything, about those conversations?

16 A I was engaged by Mrs. Clinton to assist her
17 in connection with the Whitewater real estate
18 development.

19 Q What did you do?

20 A Performed legal services for her.

21 Q Generally, what legal services did you
22 perform?

1 A She wanted me to -- best word for it is to
2 tell her about Whitewater, the real estate
3 development, to basically take a snapshot of it, tell
4 her where it stood, what lots had been sold, what
5 lots hadn't been sold, et cetera, et cetera.

6 Q And did you do that?

7 A Yes.

8 Q What was your basis of information? What
9 did you look at in order to accomplish this task or
10 this review?

11 A She had some Whitewater records that she
12 gave me to look at, and then, of course, we examined
13 the real estate records.

14 Q The records that Mrs. Clinton gave you,
15 were they in the office at the Rose Law Firm or were
16 they someplace else?

17 A When I saw them, they were at the Rose
18 Firm.

19 Q What did you do with those records after
20 you had --

21 MR. KRAVITZ: Why don't we take a break and
22 let him pick up the tape.

1 (Recess.)

2 BY MR. JOHNSON:

3 Q I think the question was what did you do
4 with the records that Mrs. Clinton gave you?

5 A Reviewed them.

6 Q And then what?

7 A They were ultimately delivered to the
8 campaign.

9 Q When you say "they were ultimately
10 delivered to the campaign," were they somewhere other
11 than in your possession prior to being delivered to
12 the campaign?

13 A No. They were -- as far as I know, they
14 remained in the Rose Law Firm's offices until they
15 were given to the campaign.

16 Q Did you personally cause them to be
17 delivered to the campaign?

18 A No.

19 Q Who did, to the best of your knowledge?

20 A I don't know.

21 Q How do you know they were delivered to the
22 campaign?

1 A I was told they were delivered to the
2 campaign, and the campaign called and asked some
3 questions, which I responded to, so I know that they
4 had them.

5 Q Do you recall who from the campaign called
6 and asked questions?

7 A There's a woman by the name of Loretta
8 Lynch, and I also talked to Jim Lyons, L-y-o-n-s, and
9 Lynch is L-y-n-c-h.

10 Q Who was Mr. Lyons at that time?

11 A I don't know what his formal capacity was
12 with the campaign, but he was acting in some capacity
13 for the campaign. Press reports later indicated that
14 he had been engaged to issue the report, which you're
15 familiar with, on Whitewater back during the
16 campaign.

17 Q Now, you described this review as having
18 taken place in 1991, as I recall?

19 A Yes.

20 Q And I think you testified that your
21 conversations with Mr. Foster about Whitewater, as
22 we've defined it, occurred sometime in 1992. Am I

1 correct?

2 A That would be correct.

3 Q So it occurred after your review you've
4 just been describing?

5 A Yes.

6 Q Did you describe your review or your
7 involvement in that review -- your involvement with
8 Mrs. Clinton in the Whitewater matter to Mr. Foster?

9 A I did not.

10 Q So to the best of your knowledge,
11 Mr. Foster was not aware that Mrs. Clinton had asked
12 you to review Whitewater?

13 A I don't know whether he knew it or not. I
14 just did not discuss it with him.

15 Q You never told him?

16 A I never told him. Didn't have any reason
17 to.

18 Q In your job duties in the White House
19 counsel's office, Mr. Kennedy, did you have any
20 professional contact with Mr. Hubbell at the Justice
21 Department?

22 A Yes.

1 Q Can you -- and I'm not asking you here to
2 recall every conversation that you had, but just
3 generally speaking, what was the reason for your
4 contacts with Mr. Hubbell?

5 A Primarily Justice Department nominees and
6 appointees.

7 Q Let me just -- this is not a question. Let
8 me just state, for the benefit of the record, that
9 which I hope is obvious. There may be a time in the
10 future when it's relevant to the Senate's inquiry,
11 the investigation or the review that you conducted,
12 the substance of the review that you conducted in
13 1991. It's not what the Special Committee is
14 investigating in this round, so far as I understand
15 it, so I don't intend to ask you questions about
16 specific -- specific questions about the Whitewater
17 Development Company, but rather --

18 A Let's hope that doesn't happen.

19 Q It's okay to hope. I interrupted you,
20 Mr. Kennedy. You were saying you had contact with
21 Mr. Hubbell relating to Justice Department
22 appointees?

1 A I had answered that question.

2 Q Did you have any other professional contact
3 or professional responsibilities that caused you to
4 interact with Mr. Hubbell in the Justice Department?

5 A No. I mean, not on a regular basis, no.

6 Q You and Mr. Hubbell were personal friends,
7 I take it?

8 A Yes.

9 Q Even though you didn't interact with him on
10 a regular basis, in your job duties, did you see
11 Mr. Hubbell frequently?

12 A Yes.

13 Q And as you undertook employment at the
14 White House in early February of 1993, did you
15 continue to have a close working relationship with
16 Mrs. Clinton?

17 A The answer is no. I mean, did I have a
18 working relationship with her? Indirectly, yes. Did
19 I see her from time to time? Yes. But did I see her
20 much? No, she's too busy for that.

21 Q Did you see her socially as well as
22 professionally?

1 A Every once in a while.

2 Q Let me now turn to the day of July 20,
3 1993, Mr. Kennedy. What were your ordinary working
4 hours? Generally what time did you come to work and
5 what time did you leave?

6 A I usually got to work between 7:30 and
7 8:00, and I left whenever. Long days.

8 Q Do you recall what time you left the White
9 House, if you did, on July 20, 1993?

10 A I think I left about -- I have no idea, to
11 tell you the truth. I just don't recall, but it was
12 probably around 7:00.

13 Q Did you see Mr. Foster on the day he died,
14 July 20th?

15 A Yes.

16 Q Did you have any conversations with
17 Mr. Foster on that day about his work or things that
18 he may have had in his office that are memorable to
19 you today?

20 A No, I did not talk to him about his work or
21 what he had in his office that day.

22 Q I take it there came a time sometime on the

1 evening of the 20th when you learned about
2 Mr. Foster's death?

3 A That's correct.

4 Q Can you tell us what you recall about that?

5 A It was around 8:00 or so. I got a phone
6 call from Craig Livingstone telling me that he had
7 gotten a report that Vince was dead.

8 Q Were you at home?

9 A Yes.

10 Q Where was Mr. Livingstone when he called
11 you?

12 A I don't know.

13 Q Did he call you on a LAN line telephone?

14 A Yes.

15 Q Do you remember anything else about what
16 Mr. Livingstone said?

17 A I didn't believe it, and I refused to
18 accept it, and I told him that he needed to reconfirm
19 it.

20 Q What did Mr. Livingstone say?

21 A He told me he thought his information was
22 good, but I insisted that he reconfirm it, and he was

1 nice enough to do so.

2 Q In this conversation, in the vicinity of
3 8:00 p.m. on this evening with Mr. Livingstone, did
4 he indicate to you that Mr. Foster had apparently
5 taken his own life?

6 A He did not know any details, other than
7 there was a report that he was dead. He had been
8 found in a park.

9 Q What's the next thing that you recall
10 relating to Mr. Foster on that evening?

11 A Mr. Livingstone called back. He had, as I
12 said, confirmed --

13 Q How much time elapsed between the first and
14 second call?

15 A I don't know. Not very much.

16 Q Few minutes?

17 A I don't know. He had called -- when he
18 called back, he had additional information, and the
19 additional information was that the body was en route
20 to a hospital. The name escapes me right now.

21 Q Is it Fairfax Hospital?

22 A I think that's right. And I told him I

1 would go over there, check it out, so I did.

2 Q By "check it out," you mean you would
3 identify Mr. Foster's body?

4 A In my mind, I was going to go over there
5 and see what was going on because I still didn't
6 believe the reports but if there was a necessity of
7 identifying the body, I was as good as anybody to do
8 it.

9 Q In between your first conversation with
10 Mr. Livingstone and the second conversation you just
11 described, did you speak with anyone about Mr. Foster
12 or what Mr. Livingstone had told you?

13 A Just my wife.

14 Q Did you, in fact, go to the hospital?

15 A I did.

16 Q Before you left for the hospital, did you
17 call anyone else in the White House to convey any
18 information of any kind?

19 A I did not.

20 Q And I take it you met Mr. Livingstone at
21 the hospital?

22 A I got there before he did, so it would be

1 better to say he met me there. The answer is yes.

2 Q How far was Fairfax Hospital from your
3 home?

4 A Pretty good ways. I couldn't tell you in
5 miles. I mean, I could show you on a map where I
6 live, and you could figure it out. It's a pretty
7 good ways.

8 Q Do you have any estimates in minutes how
9 long it may have taken you?

10 A 20 to 25 maybe.

11 Q Where did you live at the time?

12 A I lived in the Beverly Hills subdivision of
13 Alexandria.

14 Q After you and Mr. Livingstone -- after
15 Mr. Livingstone met you at the hospital, what's the
16 next thing that you recall?

17 A About what? You want to know --

18 Q In connection with Mr. Foster's death.

19 A After enduring some bureaucratic runarounds
20 and whatnot, I was finally allowed to see the body,
21 and I confirmed that it was Vince Foster.

22 Q How long did you and Mr. Livingstone remain

1 at the hospital that evening, to the best of your
2 recollection?

3 A I couldn't tell you precisely, but it was
4 at least a couple of hours.

5 Q Most of that time spent waiting to view
6 Mr. Foster's body?

7 A Uh-huh.

8 Q During that couple of hours, did you place
9 or receive any telephone calls?

10 A I didn't call anybody until after I was
11 allowed to view the body.

12 Q Who did you call after you viewed
13 Mr. Foster's body?

14 A I spoke to Mack McLarty at the White House,
15 and I think I spoke to Mr. Nussbaum.

16 Q Did you speak to Mr. Hubbell?

17 A I think so, yes.

18 Q Anybody else that you recall?

19 A No.

20 Q Were there any Park Police present at the
21 hospital?

22 A No, I don't think so. There was a

1 policeman there, but my impression is he's there all
2 the time or somebody like him is there all the time.
3 And it was trying to get him going, which was the
4 main guy, and who he was with, city or county, I
5 don't know, but much interaction trying to get him to
6 get things going.

7 Q During this period of time when you were
8 waiting, did you or Mr. Livingstone ever discuss
9 whether or not Mr. Foster had left a suicide note?

10 A Did not.

11 Q Did you discuss with Mr. Livingstone or
12 anyone else prior to seeing Mr. Foster's body whether
13 or not Mr. Foster's office should be secure or
14 sealed?

15 A Did not.

16 Q And no one raised that topic with you?

17 A Huh-uh.

18 Q Did it occur to you?

19 A No, I was not in very good shape at this
20 point in time.

21 Q After you saw Mr. Foster's body, you did
22 place or receive some telephone calls to Mr. McLarty

1 and Mr. Nussbaum, and you think Mr. Hubbell. What do
2 you recall about your telephone conversation with
3 Mr. McLarty?

4 A It was very short. I simply told him that
5 I was at the hospital, and I had indeed confirmed, in
6 case he might want to know, that it was Vince.

7 Q Mr. McLarty had already heard reports of
8 Mr. Foster's death?

9 A That is correct.

10 Q Where was Mr. McLarty when you called?

11 A At the White House.

12 Q Did you speak with anyone at that time
13 other than Mr. McLarty?

14 A I think it was on this phone call I talked
15 to Bernie as well.

16 Q Mr. Nussbaum was also at the White House?

17 A I think so.

18 Q Can you place in time this telephone call?

19 A No. I mean, it was that night but exactly
20 what time, I can't tell you.

21 Q Do you have an estimate about whether it
22 was before or after midnight?

1 A It was probably -- and this is a guess --
2 before midnight.

3 Q So you told Mr. McLarty that, in fact, it
4 was Mr. Foster's body that had been found. What, if
5 anything, did Mr. McLarty say to you?

6 A He, if I remember correctly, asked me if I
7 was sure and I said there's no doubt, and he told me
8 how sorry he was, and he hung up then, he had to go.
9 And I asked him if Bernie was around, if I remember
10 correctly, and that's when I talked to Bernie.

11 Q What do you recall about your conversations
12 with Mr. Nussbaum?

13 A Told him basically the same thing, that I
14 was out there and I had seen the body and it was
15 indeed Vince and again, I was not in very good
16 shape. And Bernie told me he was heading for the
17 Fosters' house, and that was about the substance of
18 it.

19 Q Did Mr. Nussbaum indicate to you one way or
20 the other that he had been in the White House
21 counsel's office or Mr. Foster's office?

22 A I don't recall that topic coming up.

1 Q Did you discuss with either Mr. McLarty or
2 Mr. Nussbaum whether Mr. Foster had left a suicide
3 note?

4 A I did not.

5 Q And I take it you didn't discuss with
6 either of them whether or not Mr. Foster's office
7 ought to be locked or secured or otherwise sealed?

8 A No.

9 Q Did you speak to anyone else at the White
10 House during that telephone call?

11 A No.

12 Q I suggested to you you may have spoken with
13 Mr. Hubbell. Do you have a clear recollection
14 whether you spoke with Mr. Hubbell?

15 A I think -- I don't have a clear
16 recollection of it, but I think I called Web at
17 Lisa's house, Lisa Foster's house.

18 Q How did you know Mr. Hubbell was there?

19 A I didn't.

20 Q Were you calling to speak with Mr. Hubbell,
21 or were you calling to speak with someone else?

22 A I don't think I was calling to speak to

1 anybody. What I wanted to do was to speak to a
2 family member, to let them know that I was out there
3 and had seen the body, and it was Vince.

4 Q So you called Mr. Foster's home and
5 coincidentally spoke with Mr. Hubbell?

6 A Yeah, I don't recall exactly how I got
7 there. I don't know who answered the phone, but I
8 got to Web, which is not surprising.

9 Q Because of his closeness with the Foster
10 family?

11 A Uh-huh.

12 Q What do you recall about your conversation
13 with Mr. Hubbell?

14 A I just told him -- I know now that a lot of
15 stuff had occurred while I was at the hospital, such
16 as the Park Police going to notify them and like
17 that, but I, of course, didn't have any idea that had
18 gone on, because I had gone straight to the
19 hospital. So I just passed on the information that I
20 was at the hospital, and I had seen the body, and I
21 told him -- I told Web I was coming to the house.

22 Q You don't recall anything -- I won't ask

1 all the same questions -- because you just don't
2 recall anything more about the conversation?

3 A I don't recall anything more about the
4 conversation, but the topics that you're interested
5 in did not come up.

6 Q Okay, Mr. Kennedy. What's the next thing
7 that you did?

8 A As I say, I was in pretty bad shape, but I
9 got back in the car to go get my wife so that we
10 could go to the Fosters.

11 Q Did you drive yourself?

12 A No. Craig Livingstone drove me.

13 Q To your home?

14 A Yes.

15 Q And I take it you picked up your wife and
16 proceeded to the Foster residence; is that correct?

17 A Well, she had to get dressed and basically
18 I had to get dressed, and so the answer is we got to
19 the house; we changed clothes, which took a little
20 while; then drove to the Foster residence.

21 Q What time on the evening of the 20th or
22 early morning hours of the 21st do you think you

1 arrived at the Foster residence?

2 A I couldn't tell you. I don't know if it
3 was before or after midnight. It was pretty late.

4 Q Focusing now on the period of time after
5 when you left the hospital and before you arrived at
6 the Foster residence, did you have any conversations
7 or discussions with anyone about a suicide note or
8 the contents in Mr. Foster's office?

9 A I did not.

10 Q When you arrived at the Foster home, late
11 on the 20th or early on the 21st, were there others
12 already there?

13 A Yes.

14 Q Did you go inside Mrs. Foster's house?

15 A I did.

16 Q Did Mr. Livingstone go with you, or did he
17 remain outside?

18 A I don't recall precisely if he went in
19 precisely when I did. I think he went in for a
20 while, but he also went back outside. I just don't
21 recall.

22 Q Who else was there?

1 A I couldn't tell you.

2 Q Was the President there?

3 A He either was there when I got there or he
4 arrived shortly thereafter, but the answer is yes, he
5 was there.

6 Q And you make an important point. It's not
7 really significant in my question who was already
8 there and who may have arrived later so let me
9 rephrase it and ask, who did you see while at the
10 Foster residence that evening?

11 A Well, it was chaos, and there were many,
12 many people there and you know, I saw the Foster
13 family. I saw Arkansans. The President was there.
14 Mack was there.

15 Q Mack meaning Mr. McLarty?

16 A Uh-huh.

17 Q Was Mr. Hubbell there?

18 A Yes.

19 Q Was Patsy Thomasson there?

20 A Not that I recall.

21 Q You don't recall seeing her at any time on
22 that evening at the Foster home?

1 A Not that I recall.

2 Q Was Mr. Nussbaum there?

3 A I don't think so.

4 Q I think you recalled in your conversation
5 with Mr. Nussbaum that he said he was going over to
6 the Foster home. Do you have any information today
7 about whether or not he ever did go to the Foster
8 home?

9 A I think he did, but I'm not sure. I think
10 he was there but had left by the time I got back
11 because a substantial amount of time passed between
12 that phone call and me arriving at the Foster's
13 house.

14 Q Were there any Park Police officers there?

15 A I don't recall seeing any.

16 Q No law enforcement of any kind that you
17 recall?

18 A I don't think so. I'm trying to give you
19 the impression that it was chaos. I was not in good
20 shape, and I couldn't tell you who was there with any
21 degree of certainty. I mean, it was a madhouse.

22 Q Excluding -- unless they're relevant, and

1 you'll know -- excluding conversations that you may
2 have had with Mr. Foster's family, did you discuss
3 with anyone on that evening whether or not Mr. Foster
4 had left a suicide note?

5 A Not that I recall, no. My main focus was
6 trying to assist or render aid and comfort to the
7 Foster family and to his friends.

8 Q Let me just clear up an ambiguity that I
9 left in the earlier questioning. When did you become
10 aware, if you did, on the evening of the 20th that
11 Mr. Foster had apparently taken his own life?

12 A I didn't know that for a fact.

13 Q Was it your impression at some point that
14 evening?

15 A I did not -- Mr. Foster was a mess. Let's
16 just leave it at that. Okay? I mean, he had been
17 shot. That's all I could tell you that I knew that
18 night.

19 Q Were there any conversations that you
20 recall at the Foster home that evening about
21 Mr. Foster's office?

22 A No.

1 Q No one said in your presence or you didn't
2 say to anyone someone should go in there and look for
3 something?

4 A No.

5 Q And the opposite didn't occur either, no
6 one said in your presence or you didn't say to anyone
7 we ought to close that thing up so no one gets in
8 there?

9 A No.

10 Q How long did you remain at the Foster
11 residence that evening?

12 A I don't know. Late. Well past midnight,
13 late.

14 Q Were you among the last to leave?

15 A The crowd had thinned out considerably, but
16 there were still a right many people there. By
17 "right many," I mean as many as 20, give or take.

18 Q At any point on the evening of the 20th or
19 the early morning hours of the 21st, did you speak
20 with Mrs. Clinton?

21 A I did not.

22 Q Do you have any knowledge about whether or

1 not anyone else did?

2 A No.

3 Q Mr. Kennedy, what did you do when you left
4 the Foster residence that evening?

5 A Got in the car with my wife and
6 Mr. Livingstone and we drove Craig back to the
7 hospital where his vehicle was, and then I went home.

8 Q In the early morning hours of the 21st
9 before going to work the next morning, did you have
10 any other involvement or activities relating to
11 Mr. Foster's death?

12 A That's an awfully broad question.

13 Q I'm just trying to make sure, at this point
14 in time, we're done with that night.

15 A Well, I mean I got obviously no sleep, got
16 up the next morning and went in to work.

17 Q You didn't have any further conversations
18 with anybody other than perhaps your wife on that
19 evening?

20 A I think when I got up that morning, I tried
21 to reach some of my former law partners to be sure
22 they knew, but other than that, no.

1 Q Did you call after -- strike that, Julie.
2 I'm sorry.

3 Other than the telephone calls that you've
4 described to the White House to Mr. McLarty in which
5 you may also have spoken with Mr. Nussbaum, did you
6 call the White House at any time on the evening of
7 20th or early morning hours of the 21st?

8 A Did not.

9 Q There have been, as I recall, press reports
10 at some point in time -- and I'm sorry, I don't have
11 them with me -- that perhaps you, or others perhaps,
12 may have been trying to find a combination to a safe
13 either in Mr. Foster's office or some other location
14 on that evening. Have you seen those press reports?

15 A No, but I've heard about them.

16 Q Is there any truth in them?

17 A No.

18 Q Do you even know whether Mr. Foster had a
19 safe?

20 A As far as I know, he did not, in his
21 office.

22 Q Do you know whether or not Mr. Nussbaum had

1 a safe?

2 A Mr. Nussbaum did have a safe.

3 Q In other testimony taken in connection with
4 this matter, we've been told that there was an
5 envelope in Mr. Nussbaum's safe that said "for eyes
6 only, William Kennedy" on it. Do you have any
7 knowledge about that?

8 A It said what?

9 Q The envelope said "for eyes only" -- f-o-r,
10 not f-o-u-r -- "William Kennedy."

11 A No. I don't know what that is.

12 Q And even as you sit here today, you don't
13 have any idea what that may have been?

14 A I have no idea what that could have been.

15 Q Did you ever receive materials identified
16 as "for eyes only"?

17 A Sure.

18 Q How frequently?

19 A Well, I'm searching for the right word. In
20 the context of the clearance process, I got a lot of
21 confidential stuff, a lot.

22 Q Maybe I'm making a distinction without a

50

1 difference, but I assume there's lots of confidential
2 information. "For eyes only" implies to me a higher
3 degree of security than perhaps some other things.
4 Am I wrong about that?

5 A Well, you're asking me -- I don't think
6 that that is, based on my knowledge, a sort of
7 recognized security phrase in the government security
8 classification system.

9 Q I'm sure it's not, but I think you
10 testified you receive from time to time materials
11 designated for eyes only.

12 A Yes.

13 Q Did that have any meaning to you?

14 A It meant that they were confidential.

15 Q It didn't mean any more than that to you?

16 A It means that they're sensitive to some
17 degree, confidential to some degree and whoever sent
18 them to me wanted only me to see them.

19 Q Do you recall giving any such materials
20 that had been sent to you for eyes only by
21 Mr. Foster?

22 A I'm certain that I did. I don't recall

1 specific instances.

2 Q Do you ever recall asking Mr. Foster to
3 place materials in a safe or something like that?

4 A I do not.

5 Q Let me ask you the same two questions with
6 regard to Mr. Nussbaum. Do you recall giving any
7 such materials, meaning designated for eyes only, to
8 Mr. Nussbaum?

9 A I probably did. I cannot recall any
10 specific instances.

11 Q Do you recall ever asking Mr. Nussbaum to
12 maintain any such materials in a safe?

13 A No, I don't recall doing so.

14 Q At any time after Mr. Foster's death, do
15 you recall any such materials, being the materials we
16 referred to, being returned to you from any source?

17 A No. I mean, if you're talking about
18 materials coming out of Bernie's safe marked for me.
19 I mean, with my name on them saying for eyes only,
20 no.

21 Q Without being quite that specific, because
22 it's possible you didn't know they came from Bernie's

1 safe, they may have come from somewhere else, do you
2 remember materials with that description being
3 returned to you, whether or not you knew they came
4 from Mr. Nussbaum's safe?

5 A No.

6 Q I take it you didn't seek the combinations
7 to any safe on the evening of the 20th?

8 A That's correct.

9 Q To the best of your knowledge, did anyone
10 else?

11 A Not as far as I know.

12 Q You didn't ask Mr. Livingstone or anyone?

13 A I did not.

14 Q On the morning of the 21st, Mr. Kennedy,
15 you've testified that you may have called some of
16 your former law partners to inform them of the tragic
17 news. What time do you recall going to the White
18 House?

19 A I think at about the regular time. I think
20 I got there between 7:30 and 8:00.

21 Q Before arriving at the White House, had you
22 spoken with anyone from the White House that morning?

1 A No, I don't recall doing so.

2 Q What's the first thing you recall happening
3 when you arrived at the White House that morning?

4 A I went over to Mr. Nussbaum's office.

5 Q Was Mr. Nussbaum there?

6 A Yeah, I think so. I mean, activities in
7 the morning was an enormous amount of confusion and
8 chaos as well.

9 Q Do you recall whether anyone else was there
10 when you went over to Mr. Nussbaum's office?

11 A I think members of the White House
12 counsel's office were there, peers of mine.

13 Q Mr. Sloan?

14 A I think he was there.

15 Q Mr. Neuwirth?

16 A I think he was there.

17 Q Anyone else come to mind?

18 A Beth Nolan was there. Cheryl Mills was
19 there. I don't know who else was there, but I mean
20 the people that normally should be there, I think
21 most of them were there.

22 Q Was there a routine staff meeting that took

1 place every morning in the White House counsel's
2 office?

3 A Yes.

4 Q What time did that occur?

5 A 9:00.

6 MR. KRAVITZ: Do you mean on that day or
7 just generally?

8 MR. JOHNSON: I'm going to ask him on that
9 day, but I do mean just generally. Thanks, Neal.

10 BY MR. JOHNSON:

11 Q Did that meeting occur on the morning of
12 the 21st?

13 A There was a semblance of one, but was there
14 a regular staff meeting, no. There was just too much
15 going on.

16 Q When you arrived at the White House
17 counsel's suite the morning of the 21st, was
18 Mr. Foster's office opened or closed?

19 A The door was open.

20 Q Did you go in there?

21 A I did not.

22 Q Did you see anyone go in there the time you

1 were there?

2 A No.

3 Q Why didn't you go in?

4 A I didn't have any reason to.

5 Q When you arrived at the White House

6 counsel's suite that morning, did you learn from any

7 source whether or not anyone had been in Mr. Foster's

8 office prior to your arrival that morning?

9 A No, I don't recall, no. I don't recall
10 such.

11 Q Did Mr. Nussbaum state one way or the other
12 whether or not he had been in there?

13 A He did not. I think he was sort of
14 briefing everybody. I think he said that no note had
15 been found, but I don't think he went into detail as
16 to how and what was going on.

17 Q Was it your impression from what he said
18 that Mr. Nussbaum personally had been in Mr. Foster's
19 office, or you didn't know?

20 A I didn't have an impression one way or the
21 other. I mean, I didn't have any reason to delve
22 deeper.

1 Q Was there any discussion on the morning of
2 the 21st about sealing or securing Mr. Foster's
3 office?

4 A Yes, there was discussion about how and who
5 should do that.

6 Q What do you recall about that discussion?

7 A Very disjointed discussion about whether
8 the Secret Service should be called in. If so, on
9 what basis? Should anybody else be called in to do
10 it?

11 Q Was there any discussion about whether or
12 not it should be done?

13 A No, I don't recall -- I don't recall any
14 question about whether or not access should be
15 blocked. It was more a question of how.

16 Q What was your understanding of why, on that
17 morning, the morning of the 21st, of why Mr. Foster's
18 office should be sealed or secured, or whatever the
19 right word is?

20 A I think people were concerned about the
21 integrity of his office.

22 Q And by that, you mean maintaining the

1 contents of the office as they were before Mr. Foster
2 died?

3 A Yeah. I mean, I wouldn't -- maintain the
4 integrity of the information that was in there.

5 Q Do you remember any more about the
6 discussion concerning securing Mr. Foster's office
7 other than what you've already described?

8 A No, I don't. It was -- it ultimately led
9 to a phone call to the Secret Service, and they came
10 out and stood by the door.

11 Q Do you recall learning on the morning of
12 the 21st that Patsy Thomasson had been in
13 Mr. Foster's office late on the evening of the 20th?

14 A No.

15 Q Did you learn on the morning of the 21st
16 that Maggie Williams had been in that office?

17 A No.

18 Q Did anyone ever state to you that
19 Ms. Thomasson or Ms. Williams had not been in that
20 office?

21 A No.

22 Q What's the next thing, Mr. Kennedy, that

1 you recall in connection with Mr. Foster and the
2 investigation of his death on the morning of the
3 21st?

4 A As I said, a lot of chaos, a lot of
5 disjointed activity, but somehow I learned that there
6 was to be a Park Police briefing about what they had
7 found, which I attended.

8 Q Who else off the top of your head do you
9 recall attended that briefing?

10 A I can't tell you for sure. I think
11 Mr. Hubbell was there. Bernie Nussbaum was there. I
12 think David Watkins was there. I think there were
13 two people from the Park Police there.

14 Q Do you remember either of their names?

15 A No.

16 Q Was one of them Chief Langston?

17 A I'm sorry, I don't recall. They were
18 pretty big dogs.

19 Q High-ranking officials?

20 A They were officers, yes. And there were
21 some other people there, but I don't remember who
22 they were.

1 Q Was Mr. Sloan there?

2 A I don't think so.

3 Q What about Mr. Neuwirth?

4 A I don't think so.

5 Q Was Mr. Stephanopoulos there?

6 A He may have been. I don't recall.

7 Q Who did the talking?

8 A Park Police mostly.

9 Q Do you recall what they said, just in a
10 general way?

11 A They basically went through physically what
12 they had found, in sort of a chronological order,
13 giving the basis for their conclusion that it was
14 probably a suicide.

15 Q Was there any discussion in the morning
16 meeting about the review of the contents of
17 Mr. Foster's office?

18 A That meeting?

19 Q Yes, sir.

20 A Not that I recall, not at that meeting, no,
21 sir.

22 Q Was there any discussion at that meeting

1 about what involvement, if any, the Department of
2 Justice would have in the investigation into
3 Mr. Foster's death?

4 A I think there may have been a discussion
5 between Bernie and Web after the meeting broke up as
6 to sort of what was going to happen. Web, I recall,
7 had said that he was at that meeting as much as I
8 was. I was not at that meeting as an associate
9 counsel to the President. I was at that meeting as a
10 good friend of Vince Foster's, and I wanted to find
11 out what they knew, and I think Web was there as well
12 on that basis, not officially representing the
13 Justice Department.

14 But there was a brief discussion between
15 Bernie and Web about what should be done with regard
16 to Vince's office.

17 Q What do you recall about that discussion?

18 A I think Web said Bernie, you ought to let
19 the Justice Department handle this or words to that
20 effect. I don't recall the precise words.

21 Q The "this" being the review of the contents
22 of Mr. Foster's office?

1 A I think more along the lines of the
2 investigation in general. I don't recall a specific
3 discussion about the office.

4 Q Did you just overhear this conversation, or
5 was it a conversation between the three of you?

6 A No. I walked up to tell Bernie that I was
7 heading back to the OEOB, where my office was, and I
8 happened to hear this conversation. I was also going
9 to say goodbye to Web.

10 Q Your best recollection is Mr. Hubbell said
11 to Mr. Nussbaum you ought to let the Justice
12 Department handle this?

13 A It was not -- I want to make this clear.
14 Bernie and Web were friends. It was not a command.
15 It was not an order or anything like that. It was
16 just friendly advice.

17 Q Do you remember anything else that
18 Mr. Hubbell said?

19 A No.

20 Q Did he say why -- did he explain to
21 Mr. Nussbaum why it was his position that the Justice
22 Department ought to handle it?

1 A No, I heard just a snippet of this.

2 Q Did you hear Mr. Nussbaum's response?

3 A No, Bernie did not really respond because
4 of primarily me walking up interrupted them. I think
5 he just shook his head.

6 Q Affirmatively or negatively?

7 A He just shook his head. I don't know what
8 he meant by that or, whatever.

9 Q More an acknowledgment of hearing the
10 remark other than responding to it?

11 A What I'm trying to be very careful is, I'm
12 not saying I know how Bernie responded to that
13 because I don't.

14 Q Did you discuss with Mr. Nussbaum, later on
15 that day, Mr. Hubbell's suggestion that the Justice
16 Department handle this?

17 A Prior to the Park Police briefing, Bernie
18 and I spoke about my involvement in these matters,
19 and "these matters" being Vince's death and anything
20 that transpired after that. And Bernie suggested,
21 and I agreed, that I stay out of things.

22 As a matter of fact, Bernie did not want me

1 to attend the Park Police briefing, but I insisted on
2 attending. After the Park Police briefing, I stayed
3 out of things.

4 MR. JOHNSON: Why don't we take --
5 Mr. Kennedy, I want to probe a little more your
6 conversation with Mr. Nussbaum before the Park Police
7 briefing, but why don't we take just a five-minute
8 break now. That will carry us to lunch and maybe we
9 can speed through the rest of this.

10 (Recess.)

11 BY MR. JOHNSON:

12 Q I think, Mr. Kennedy, before we broke, you
13 were telling me about a conversation between you and
14 Mr. Nussbaum, which occurred before the Park Police
15 briefing, which we've been talking about, on the
16 morning of the 21st. And if I recall what you had
17 said before we broke, is that Bernie had suggested
18 that you stay out of things relating to Mr. Foster's
19 death; is that correct?

20 A Yes.

21 Q Who initiated that topic?

22 A Bernie did.

1 Q Just the two of you in a one-on-one
2 conversation?

3 A No. It was in Bernie's office with a bunch
4 of people around, but I mean, it was not a group
5 discussion. It was me talking to Bernie, but there
6 were a lot of people around.

7 Q Did Mr. Nussbaum say why he thought it was
8 appropriate for you to not be involved?

9 A No, but he didn't need to.

10 Q You understood why he was suggesting that?
11 What was your understanding of why?

12 A All this fun.

13 Q And by that, you're referring to the
14 investigation?

15 A Bernie will have to tell you as to why he
16 thought it was appropriate. Why I thought it was
17 appropriate is that, coming from the Rose Firm, being
18 a close, close friend of Vince's, that both from a
19 practical and emotional and an appearance standpoint,
20 it would be better if I did not have any involvement
21 in whatever transpired after Vince's death, which
22 made sense from all sorts of perspectives to me.

1 But as I said, because it was so hard for
2 me to believe that Vince had killed himself, I
3 insisted on attending the briefing, which I did.

4 Q I think you also said that Mr. Nussbaum did
5 not want you to attend that briefing?

6 A As part of his position.

7 Q Did he specifically say it? Did he
8 specifically say Bill, I wish you wouldn't go to that
9 but if you have to --

10 A I can't remember what he said but I
11 understood he clearly did not want me to go.

12 Q Did you and Mr. Nussbaum discuss any
13 specifics about events to come? For example, did he
14 say to you, or did you say to him, that you shouldn't
15 be involved in reviewing the contents in Mr. Foster's
16 office?

17 A We did not discuss specifics.

18 Q Do you recall anything more about the
19 conversations with Mr. Nussbaum that you've been
20 describing, other than what we've talked about?

21 A No.

22 Q And I think before we took a step back in

1 the chronology, you were saying at the conclusion of
2 the Park Police meeting, you overheard Mr. Hubbell
3 say to Mr. Nussbaum that he ought to let the Justice
4 Department handle this; is that correct?

5 A Uh-huh.

6 Q And you don't recall anything more about
7 that conversation than what we've said already, I
8 take it?

9 A I do not.

10 Q Did you have any conversations with
11 Mr. Nussbaum or anyone else afterwards about what
12 role, if any, the Justice Department would play in
13 the investigation?

14 A I did not.

15 Q What's the next thing, Mr. Kennedy, that
16 you recall happening on the 21st in connection with
17 Mr. Foster's death?

18 A I went back to my office, and that's
19 basically it.

20 Q You made it a conscious effort not to be
21 involved after that time. Is that a fair statement?

22 A That's absolutely accurate.

1 Q There was a meeting late that afternoon in
2 Mr. Nussbaum's office, which was attended by Park
3 Police, Department of Justice representatives and
4 others. Do you have any knowledge about what
5 transpired at that meeting?

6 A Other than it may have been reported in the
7 press, no.

8 Q You've never spoken with anyone who
9 attended that meeting on the topic of what transpired
10 at that meeting?

11 A No.

12 Q Let me, just in order to fix a date in
13 time, and without asking you to reveal any of your
14 conversations with counsel, do you recall on what
15 date you personally retained counsel in connection
16 with this investigation?

17 A Which investigation?

18 Q Well, when did you personally retain
19 counsel?

20 A Gosh, I don't know. I've retained
21 counsel -- I'm sorry, and this is not intending to be
22 elusive but you need to be specific. I've been

1 investigated up one side and down the other.

2 Q I understand.

3 A I mean, I've retained counsel --

4 Q You retained counsel in connection with the
5 White House travel investigation?

6 A No.

7 Q Had you ever retained counsel prior to
8 Mr. Foster's death?

9 A Let me see. I get confused about timing,
10 but I think prior to Mr. Foster's death, no.

11 MR. KRAVITZ: Just so the record is clear,
12 your question refers to his actions as an associate
13 White House counsel?

14 MR. JOHNSON: Yes. Thank you.

15 BY MR. JOHNSON:

16 Q I'm not asking about lawyers you may have
17 had hired to buy houses or something like that.

18 A I understand what you're driving at, but
19 yeah, I think the answer is accurate. I had not
20 retained counsel until after Foster's death.

21 Q Are you able to place in time, for whatever
22 reason -- you've alluded to a number of

1 investigations, whichever led to you counsel first,
2 can you place it in time?

3 A I think it probably would have been in
4 September of 1993, and it was in connection with the
5 FBI investigation of a telephone call I received from
6 Randy Coleman acting as counsel for David Hale.

7 Q I think the question that precipitated my
8 trying to fix that date in time was whether or not
9 you had ever had any conversations with anyone who
10 participated in the late afternoon meeting on the
11 21st in Mr. Nussbaum's office, and as I recall, your
12 answer to that was no.

13 As we sit here today, you don't have any
14 knowledge about that meeting, other than what you may
15 have read in the newspaper reports; is that correct?

16 A That's correct.

17 Q On the next day, there was actually a
18 meeting in Mr. Foster's office during which the
19 contents of that office were reviewed. You were not
20 there, I take it?

21 A That's correct.

22 Q Other than what you may have read in press

1 accounts, did you have any knowledge at all from any
2 source at all about what transpired in that meeting?

3 A I do not.

4 Q You've never spoken with Mr. Nussbaum about
5 how he conducted the review or why?

6 A No.

7 Q Did you ever speak with Mr. Hubbell about
8 Mr. Foster's office or the contents of Mr. Foster's
9 office?

10 A No.

11 Q Now, that seems odd to me because you and
12 he are close personal friends, and it was very much
13 reported in the press. Is there a particular reason
14 that you consciously not raised the topic with him?

15 A I'm sorry it seems odd to you, but it just
16 didn't come up. I mean, it is certainly possible in
17 all that has transpired since then that I may have
18 discussed with Web sort of those events, but
19 contemporaneous or anywhere near the time, no.

20 Q You may have answered this earlier, but was
21 there a conscious effort on your part not to discuss
22 it with Mr. Hubbell?

1 A It took a conscious act of will on my part
2 to stay out of matters involving Vince, so to that
3 extent, the answer is yeah. It was very hard for me
4 to sit on the sidelines when all this was going on
5 because I felt like I ought to be helping, but Bernie
6 and I had agreed that this was the right thing to do
7 and I agreed with Bernie, as I have said. It was the
8 right thing to do so that's what I tried to do.

9 Q When, Mr. Kennedy, did you return to
10 Arkansas for Mr. Foster's funeral?

11 A I came back to Arkansas on the plane that
12 carried the body. I don't remember what date that
13 was. It should be easy to figure out.

14 Q Our best information is that may have been
15 on the 22nd.

16 A Sounds about right.

17 Q His funeral was actually on the 23rd of
18 July, which was a Friday. Did you travel back to
19 Arkansas the day before the funeral?

20 A Whenever that plane came home, that's when
21 I came home.

22 Q Who else was on that airplane with you?

1 A I couldn't tell you. I mean, I think a
2 bunch of people were.

3 Q It was a commercial flight?

4 A No, it was a government flight.

5 Q The President was not on that flight, I
6 take it?

7 A No.

8 Q Was Mr. Hubbell on that flight?

9 A I think so.

10 Q When you arrived -- and I take it there
11 were no conversations that you recall en route
12 relating to a note or contents of Mr. Foster's office
13 or anything to that effect?

14 A No.

15 Q When you arrived in Arkansas -- I realize
16 there's some ambiguity in the record about the date,
17 I think it was the 22nd --

18 A I just don't remember whether it was
19 21st -- it couldn't have been the 21st. Whether it
20 was the 22nd or 23rd, I don't recall. But it's
21 easily verifiable.

22 Q Did you see Mrs. Clinton when you arrived

1 there?

2 A No, not that day.

3 Q Did you see Mrs. Clinton at any time prior
4 to Mr. Foster's funeral?

5 A Yes.

6 Q Was it a one-on-one meeting with her, or
7 were there others present?

8 A I stopped by to talk to her at her mother's
9 house in Little Rock, and there were others present.

10 Q Did you have any conversations with
11 Mrs. Clinton about Mr. Foster's death that were other
12 than condolences or about the tragedy itself?

13 A Well, we talked about how shocking it was.
14 We talked about how inexplicable it was and what we
15 could have done to prevent it and how it could have
16 happened and how unbelievable it was, how mad we both
17 were at him, stuff like that.

18 Q Did you discuss whether or not Mr. Foster
19 had left a note of any kind?

20 A No.

21 Q I take it you didn't discuss Mr. Foster's
22 office or the contents of his office?

74

1 A No.

2 Q How long did you personally remain in
3 Arkansas after the funeral?

4 A No time at all.

5 Q Did you travel back with the President?

6 A Yes.

7 Q And that was on Friday evening, the 23rd;
8 is that correct?

9 A Whenever it was, yes.

10 Q That's when it was. Okay. Now, the
11 handwritten note of Mr. Foster's was apparently
12 discovered on the 26th, Monday the 26th. How did you
13 learn that, if you did?

14 A I didn't learn about the note until -- I
15 don't know what day it was, but it was shortly after
16 it was found. And Bernie called me and asked me to
17 come over to the White House to the west wing, and he
18 showed me the note. I mean, he showed me his
19 handwritten -- what the note was.

20 Q Did you actually see the note?

21 A No.

22 Q But you saw a handwritten transcription of

1 the note; is that right?

2 A Yes.

3 Q That was in Mr. Nussbaum's handwriting?

4 A Yes.

5 Q That was on the afternoon of the 26th; is
6 that correct?

7 A I don't recall precisely when it was.

8 Q Where physically were you standing when you
9 saw it?

10 A I was in Mr. Nussbaum's office.

11 Q Was there anyone else there?

12 A No.

13 Q What, if anything, did Mr. Nussbaum say to
14 you about the circumstances under which the note was
15 found?

16 A He told me that it had been found in a
17 briefcase in little pieces, that Steve Neuwirth had
18 found it, that he, Bernie, had missed it. And that
19 was about it, and then, of course, he went through it
20 with me.

21 Q When you say that "he, Bernie, had missed
22 it," what did you understand him to mean by that?

1 A That whenever they had been going through
2 stuff, whenever that was, that it had been missed.

3 Q As best you can recall, do you think those
4 were his exact words, I missed it or we missed it?

5 A I don't recall the specifics of it, but
6 words to that effect. I just missed it.

7 Q Did Mr. Nussbaum tell you at that time who,
8 if anyone else, had seen the note, other than
9 Mr. Nussbaum?

10 MR. KRAVITZ: I think Mr. Kennedy already
11 testified that Mr. Neuwirth -- Mr. Nussbaum said that
12 Mr. Neuwirth discovered the note.

13 MR. JOHNSON: That's a good point.

14 BY MR. JOHNSON:

15 Q Other than Mr. Neuwirth.

16 A Again, I don't recall the specifics of it
17 but I believe at this point in time it had already
18 been shown to Mrs. Foster.

19 Q And what do you base that belief on?

20 A If I recall correctly, Bernie told me that
21 they had shown it to Mrs. Foster. They waited until
22 she could see it.

1 Q Did you have any indication one way or the
2 other about whether Mr. McLarty had seen the note?

3 A I don't recall any conversations to that
4 effect.

5 Q Did you have any impression one way or the
6 other about whether or not the President had seen the
7 note?

8 A I don't recall specifics, as I keep saying,
9 about this conversation, but I think Bernie had
10 indicated that the President and First Lady were
11 aware of the note. Whether they had actually seen it
12 or not, I don't know.

13 Q You don't know whether Mrs. Clinton had
14 seen it or been made aware of it?

15 A I don't have a clue.

16 Q Did you ever ask Mrs. Clinton?

17 A No.

18 Q Did Mr. Nussbaum say what, if anything, he
19 intended to do with the actual note?

20 A Well, the actual note was no longer around.

21 Q How do you know that?

22 A Because he told me so.

1 Q Did he say where it was?

2 A No. He said it had been turned over, and I
3 don't know if it was to the Park Police or Department
4 of Justice or who, but it had been turned over.

5 Q Your impression is it wasn't at the White
6 House anymore?

7 A Yes.

8 Q Did Mr. Nussbaum ask you any questions
9 about the substance of the note?

10 A He sort of went through it like that, just
11 read it to me.

12 Q Do you recall anything else about that
13 conversation with Mr. Nussbaum?

14 A Well, both Bernie and I wondered about what
15 parts of it meant. But what Bernie was doing was
16 extending me a courtesy, and he wanted me to know
17 that this note had been found, and he wanted me to
18 know what was in it.

19 Q Other than that conversation with
20 Mr. Nussbaum -- I realize that it's not clear to you
21 on what precise day that occurred --

22 A I apologize for that, but you've heard the

1 circumstances. I just don't know what day it was.

2 Q Based on other testimony, we believe the
3 note was turned over to the Park Police sometime on
4 the 27th. So your best guess is it's sometime after
5 that event?

6 A Clear impression from Bernie was that the
7 note was no longer around. So if you tell me it's
8 the 27th, then that's good enough for me.

9 Q After the note was discovered, the FBI
10 investigated the handling of the note during the 30
11 or so odd hours between its discovery and its being
12 turned over. Did you ever become aware of that?

13 A I think I learned about that from
14 subsequent press reports but at the time, no.

15 Q The FBI did not interview you in connection
16 with that?

17 A No. It's one of the few times they didn't.

18 Q And did you ever discuss that investigation
19 with Mr. Hubbell?

20 A I did not.

21 Q Craig Livingstone reported to you at this
22 time, didn't he?

1 A Yes.

2 Q There had been -- later in time there were
3 press reports that Mr. Livingstone may have been
4 observed by a uniformed member of the Secret Service
5 on the morning of the 21st carrying a briefcase and
6 in the company of someone moving a box or boxes. Do
7 you remember reading those reports?

8 A Yes.

9 Q Did you ever discuss that with
10 Mr. Livingstone?

11 A Yes.

12 Q What do you recall about those discussions?

13 A Craig came to me -- well, the first
14 conversation I had with Craig about it, I was in
15 Little Rock, called into the office and there was a
16 message that Craig wanted to talk to me. And so I
17 got transferred to him, and he asked me if I had a
18 copy of the chronology he had prepared surrounding
19 Foster's death, and at first I didn't remember what
20 he was talking about but as he explained it, I
21 realized what he was talking about. And of course, I
22 was in Little Rock, and I told him that I couldn't do

- 1 anything about it until I came back.
- 2 Q Do anything about what?
- 3 A Finding it for him, until I got back. When
- 4 I came back, I looked for it but couldn't find it.
- 5 Called him and told him so. And the next time I saw
- 6 him, I asked him what was going on, and he said that
- 7 this allegation had been made, and he was trying to
- 8 find the chronology to rebut the allegation, and he
- 9 basically said the allegation was untrue.
- 10 Q Did he offer any explanation about what the
- 11 Secret Service agent may have observed?
- 12 A No.
- 13 Q So all you know from your conversations
- 14 with Mr. Livingstone is that he said that allegation
- 15 was false?
- 16 A To use his exact words, he said it's
- 17 absolute bullshit. Pardon me.
- 18 Q Did you inquire further of Mr. Livingstone
- 19 or others into the allegation?
- 20 A No.
- 21 Q Did you ask others in the White House
- 22 whether anyone else had seen Mr. Livingstone on that

- 1 morning?
- 2 A No.
- 3 Q So you just kind of let it drop at that?
- 4 A Well, I continued to look for the
- 5 chronology, which I couldn't find, and Craig had
- 6 trouble finding a copy of it. Ultimately he did, and
- 7 he reported back to me the next time I saw him or
- 8 several times after that that I saw him, that he had
- 9 found it. Basically that was the end of it.
- 10 Q Did you and Mr. Livingstone discuss on any
- 11 occasion whether or not the Secret Service office had
- 12 some reason to fabricate a story involving
- 13 Mr. Livingstone?
- 14 A No. I mean, the conversation with Craig
- 15 was along the lines of this allegation has been made,
- 16 it's BS. I need this chronology to rebut it -- it's
- 17 a lawyer's term, but I need this chronology to prove
- 18 up what I was doing, where I was. I mean, he's
- 19 reiterated that theme. He's constantly said it was
- 20 not true. I don't recall any conversations along the
- 21 line that number was out to get him, but he's always
- 22 consistently maintained that this story was a

1 fabrication.

2 Q Let me show you a document which is marked
3 Z000494 which bears the legend at the top "report
4 from Craig Livingstone, July 21, 1993." Is this the
5 chronology to which you were referring?

6 A I don't recall that it had SHC all over it.

7 Q You're correct. That's an internal
8 security labeling for our purposes.

9 A I think this is it.

10 Q Mr. Livingstone testified that he may have
11 consulted with you about the wisdom of preparing this
12 chronology at some time on the 21st. Do you have any
13 recollection of that?

14 A I think Craig came in the office and he
15 said that he would like to do this. I mean, I said
16 fine but my mind was on other things.

17 Q Did he say why he thought it would be a
18 good idea to prepare a chronology?

19 A Not that I recall. He did not.

20 Q Do you have any recollection today of your
21 thinking it was a good idea or bad idea?

22 A No. It would not have bothered me one way

1 or the other. As I said, I had my mind on other
2 things.

3 Q To the best of your knowledge, did he
4 submit a draft of this chronology to you for your
5 comments?

6 A I don't recall him doing so. He might
7 have, but I don't recall it.

8 Q Let me show you another document, bearing
9 document production number Z000463. Just for the
10 record, it's a handwritten legal-sized piece of paper
11 which appears to be a chronology of events on July
12 20, 1993. Do you recognize the handwriting there?

13 A No.

14 Q Mr. Livingstone has testified that the bulk
15 of the handwriting on that document is his own, but
16 he also testified that the legend that appears at the
17 very top left of that page is not his. It's someone
18 else's handwriting. Are you able to read that?

19 A No.

20 Q Is that your handwriting?

21 A No.

22 Q Do you recognize whose handwriting it is?

1 A I do not. Can I look at this just for a
2 moment?

3 Q Help yourself. I actually have a more
4 legible copy of the same document, if it's useful.

5 A I don't see how you boys read these things.

6 Q Yes, it's an issue. You don't recognize
7 that handwriting?

8 A No.

9 Q Let me show you another document bearing
10 document production numbers Z000497 and 498, which,
11 I'll state for the record, appears to be another
12 chronology of the events of July 20, 1993. Again,
13 the SHC legend is not on the original.

14 Have you seen that document before?

15 A I don't recall seeing it before.

16 Q It follows, then, that you didn't prepare
17 it?

18 A No, I did not.

19 Q Let me show you another document, which has
20 been produced to us by the White House. It bears
21 document production numbers Z000660 and 661.
22 Portions of this document have been redacted, and I

1 ask you to take a look at that. Ignore, Mr. Kennedy,
2 the yellow Post-it. That's my annotation for
3 purposes of these questions.

4 Do you know what that is?

5 A It looks like to me it's a list of pager
6 messages.

7 Q Are you able to read the top one at the top
8 of that page?

9 A Uh-huh. It says -- it says GD. It looks
10 like "IRMD users," bracket -- what are you interested
11 in?

12 Q Who paged you?

13 A It looks like Patsy Thomasson is paging me.

14 Q Do you have any -- I can represent to you
15 that, based upon other documents that we've reviewed,
16 this page appears to have been received at roughly
17 9:30 in the morning on the 21st. Do you have any
18 recollection of speaking with Ms. Thomasson at that
19 time?

20 A I do not.

21 Q The page seems to suggest they may have
22 been calling you re: an international Park briefing

1 or something of that kind. Does that refresh your
2 recollection about any conversations you may have had
3 with Ms. Thomasson?

4 A No. I just don't recall what she wanted.
5 She may have been calling to tell me about it, to
6 tell me it was occurring or to know about it. I
7 don't know.

8 Q Was Ms. Thomasson in the Park Police
9 briefing that you attended?

10 A I don't recall her being there, but perhaps
11 she may have been.
12
13
14
15
16

17 Q Now, the tedious part. I'll try and do
18 this as quickly as I possibly can. Let me show you
19 another document bearing production number 001004
20 which appears to be a telephone memorandum to Bill
21 Kennedy dated 7/21, time 8:45, from Craig
22 Livingstone. Do you recognize the handwriting?

1 A No.

2 Q Do you have any recollection today of
3 speaking with Mr. Livingstone on the early morning of
4 the 21st of July?

5 A As I said, I believe Craig talked to me
6 about the chronology, but I don't recall this message
7 or what it was about. It could have been about
8 anything.

9 Q You just don't have any recollection one
10 way or the other. Let me show you another document
11 that's marked 000726 -- again appears to be a
12 telephone memorandum dated 7/21 at 9:00 a.m. It
13 appears -- perhaps you can shed some light on it for
14 us. It's at the top of the page.

15 A What is your question?

16 Q What does it mean to you?

17 A I don't know what that says. Martha would
18 have been Martha Stanley who worked for us as sort of
19 a Jack of all trades or receptionist. If this is to
20 Craig Livingstone, then they are saying that I'm
21 there.

22 Q In Mr. McLarty's office?

- 1 A Right.
- 2 Q On the morning of the 21st?
- 3 A Right.
- 4 Q Do you remember being in Mr. McLarty's
- 5 office on the morning of the 21st?
- 6 A That's where the briefing occurred.
- 7 Q The Park Police briefing that you
- 8 described?
- 9 A Yes.
- 10 Q You weren't, to the best of your
- 11 recollection, in Mr. McLarty's office for any other
- 12 reason?
- 13 A The answer is no, but to shed some light on
- 14 that, the Watkins office where the briefing occurred
- 15 was part of the chief of staff's office, even located
- 16 in different places.
- 17 Q And you don't remember -- I appreciate that
- 18 distinction. So you do remember being in
- 19 Mr. Watkins's office on the morning of the 21st for
- 20 the briefing?
- 21 A Yes, I think that's where it occurred.
- 22 Q You don't recall being in Mr. McLarty's

- 1 personal office at any time on the morning of the
- 2 21st?
- 3 A I don't recall being there.
- 4 Q Let me show you another phone message,
- 5 document number Z001005. It's a message for Bill
- 6 dated 7/21/93 at 5:58 p.m. from Jamie Gorelick. Have
- 7 you seen that before? Did you speak with Jamie
- 8 Gorelick on the 21st?
- 9 A I don't recall. It's possible that I did.
- 10 Q What was Ms. Gorelick's job at that time?
- 11 A I believe she was general counsel of the
- 12 Department of Defense.
- 13 Q Do you recall anything about your
- 14 conversation with Ms. Gorelick on that day?
- 15 A No, I don't recall the specifics of it.
- 16 Q Do you recall the topic of the
- 17 conversation?
- 18 A I'm sorry, I don't.
- 19 Q Was it about Mr. Foster?
- 20 A I don't recall. Jamie and I had developed
- 21 a working relationship at that time. She could have
- 22 been calling to express her condolences. She could

1 have been calling for work. I just don't know.

2 MR. JOHNSON: Off the record.

3 (Discussion off the record.)

4 BY MR. JOHNSON:

5 Q Let me show you a document that's been
6 marked Z000621 and also let me show you Z000403 and
7 404, which I will tell you, I believe, is a draft of
8 the same memorandum, and for the record, it appears
9 to be a memorandum for the file from Tom Castleton
10 regarding transfer of contents in deputy counsel's
11 office.

12 Have you seen either of those two memoranda
13 before, Mr. Kennedy?

14 A I do not recall seeing them before.

15 Q Do you recall ever discussing with
16 Mr. Castleton his transportation of any of the
17 documents or his transfer, rather, of any of the
18 contents of Mr. Foster's office to anyone at all?

19 A Yes, I discussed the subject of that memo
20 with Tom, yes.

21 Q Can you tell us what you recall about those
22 discussions?

1 A One day Tom shows up in my office with a
2 dolly full of boxes and starts to unload them.

3 Q In your office?

4 A Yes, in the OEOB. And being slow, but not
5 necessarily stupid, I asked Tom what he was doing,
6 and he said he was bringing boxes over from Vince
7 Foster's office. And I said Tom, who asked you to
8 do, and he said Betsy.

9 Q "Betsy" meaning Betsy Pond?

10 A Right. And this was about the time Joel
11 Klein was coming on board to take Vince Foster's
12 place as deputy White House counsel. And he said he
13 had been told by Betsy to bring them over and, so I
14 said fine, I'll inquire, and so I called Betsy. And
15 Betsy said that Bernie had said send them over and
16 Tom went ahead and brought the rest of them, and
17 there were a number of boxes which remained stacked
18 in my office for a number of months.

19 When one of the other investigations
20 cranked up, I asked Tom to prepare the memos which
21 you showed me to sort of outline the history of those
22 files coming over, but I did not, on purpose, review

1 or see those memos until now, the best I can recall.

2 Q I'm not sure I understood the meaning of
3 the phrase "on purpose" in that last answer. You
4 deliberately did not see them?

5 A I deliberately did not want to see the
6 history of those documents.

7 Q And why is that?

8 A Because I knew that the documents would
9 become -- or they already had become the subject of
10 an investigation, and it was part and parcel of my
11 agreement with Bernie that I would not have anything
12 to do with Vince Foster matters so --

13 Q Did you ever become aware that certain
14 files that were in Mr. Foster's office had been
15 stored in the residence for some period of time?

16 A I became aware through press reports that
17 that had happened. I did not know it
18 contemporaneously or any other way.

19 Q In your conversations with Mr. Castleton,
20 he didn't tell you that?

21 A Never came up.

22 Q Let me show you another document dated

1 April 28, 1994, bearing document production number
2 Z000405, apparently a memorandum from Christopher
3 Cerf to file and ask you if you've ever seen that
4 before?

5 A Yes, I have seen this before.

6 Q In what context have you seen this before?

7 A Chris Cerf got tasked with dealing with
8 these boxes. And I should round this out by making
9 reference to part of that memo. I had added to the
10 boxes, disks and a tape backup of Mr. Foster's
11 computer. And this is Chris Cerf telling me about
12 his disposition of the boxes and these disks and
13 tape.

14 Q You personally added the disks and tape
15 backup from Mr. Foster's computer; is that correct?

16 A Yes, that's correct.

17 Q And what about from Ms. Gorham's computer,
18 did you personally have those as well?

19 A No. I need to be more specific, and I
20 apologize for the inelegant answer. Deb Gorham was
21 Mr. Foster's secretary for most of the time he was
22 deputy White House counsel. Vince did not use

1 computers very much, and so when I say Mr. Foster's
2 computer, what I'm really referring to is Deb
3 Gorham's computer that had the lion's share of
4 whatever documents might be on that computer.

5 Q Did Mr. Foster actually have a computer in
6 his office?

7 A I believe so.

8 Q To the best of your knowledge, did anyone
9 ever review that computer?

10 A I can't answer that. I don't know.

11 Q When did you obtain the backup, the disks
12 and the backup from Ms. Gorham's computer?

13 A I can't tell you precisely. Deb Gorham
14 moved from the west wing to the OEOB, and the
15 computer moved with her. She subsequently took
16 employment outside the White House, and she came to
17 me one day and said I'm fixing to leave. What should
18 I do about this? And I said if you're fixing to
19 leave, we need to be sure and back this hard drive
20 up. And so I suggested that she do it with disks and
21 I also suggested that she get the computer gurus in
22 the White House to come up and do a tape backup. I

96

1 got this at about the time she left, but I can't tell
2 you when that was.

3 Q To the best of your knowledge, had anyone
4 gone through Ms. Gorham's computer disks or hard
5 drive prior to your suggesting that she gave those?

6 A I can't answer that. I just don't know.

7 Q Did you go through them afterwards to see
8 what was on there?

9 A No, I did not.

10 Q To the best of your knowledge, did anyone
11 else?

12 A Chris Cerf told me that sometime after the
13 transfer that he refers to in that memo, that the
14 documents had been printed out and he told me that
15 they were innocuous but I don't know who saw them, on
16 what basis, et cetera, et cetera. I just don't know.

17 Q You did not yourself see them?

18 A I did not.

19 Q Do you know where they were stored, the
20 printout of the documents?

21 A No, other than what's in that memo, that's
22 all I know.

1 Q And the memo from Chris Cerf says that the
2 backup tape was transferred to a locked safe in the
3 Old Executive Office Building, room 46. All the
4 diskettes were carried to the new executive office
5 building where a new set was made and the originals
6 were placed in the same safe as the backup. When you
7 left the White House, to the best of your knowledge,
8 were those things still all there?

9 A As far as I know.

10 Q You never heard that they had been
11 removed. Let me show you another document, which is
12 a four-page document bearing document production
13 numbers 000407 through 410 and ask you whether you've
14 ever seen that document before.

15 A I do not recall having seen that document
16 before.

17 Q Let me show you Z000411, a legal-sized page
18 which has been largely redacted except for one entry
19 near the bottom in handwriting which appears to bear
20 your name, but I have great difficulty reading the
21 rest of it. The first question would be can you read
22 it, and the second question is what is it?

1 A Clearly, it states my name. It says Bill
2 Kennedy, and I can't read the rest of it. I can't
3 read the first word. It says "VF," which probably
4 means Vince Foster, and "boxes of files," but I can't
5 read the balance of it.

6 Q I have to confess, I had great difficulty
7 myself. My one guess is it may say something like
8 "no opinion." Does that refresh your recollection
9 as to any conversations you may have had with anyone?

10 A No.

11 MR. KRAVITZ: It could say that. I
12 wouldn't have guessed it, but it could say that.

13 THE WITNESS: No.

14 BY MR. JOHNSON:

15 Q It may also say "no onion." I just can't
16 read it.

17 Let me show you another document bearing
18 document production numbers Z000412 through 415 and
19 for the record, it's a handwritten note that appears
20 to be dated -- it's uncertain to me. It's on
21 stationery of the White House.

22 (Exhibit Z412 through Z415 identified.)

1 MR. KRAVITZ: Mr. Kennedy, if this helps at
2 all, there was testimony from Mr. Castleton, who I
3 think wrote this memo or this note on page 412, that
4 he thinks the date of the memo was 11/17/1993 and
5 that the 11 simply didn't come through on the Xerox.

6 THE WITNESS: When Tom brought the boxes
7 over, he told me that there was an inventory of the
8 boxes inside, and I believe that there was also some
9 indication of their contents on the outside. I
10 presume that this may be the inventory that he's
11 talking about, but I never went into the boxes to
12 examine their contents in any sort of detail, so
13 presumably, that's it.

14 BY MR. JOHNSON:

15 Q Let me just try and wrap up some broad
16 themes, Mr. Kennedy. I don't intend any of these
17 questions as a memory test, but really, just an
18 exercise in caution for myself to make sure I haven't
19 missed something that you do happen to recall today.

20 There have been reports in the press that a
21 number of people may have entered Mr. Foster's office
22 or the White House counsel's suite on the evening of

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1 the 20th, and I just want to ask you whether I
2 haven't obtained any information that you have to
3 give about that.

4 Have you ever discussed with Mr. Nussbaum,
5 up to and including the time as we sit here today,
6 whether or not he entered Mr. Foster's office on that
7 evening?

8 A I have not, not that I recall.

9 Q Have you ever discussed the same topic with
10 Maggie Williams?

11 A Not that I recall.

12 Q Patsy Thomasson?

13 A Not that I recall.

14 Q There is some suggestion that's been
15 reported in the press that Mr. Watkins may have asked
16 Patsy Thomasson to go in that office and look for a
17 note. Have you ever discussed that topic or the
18 contents of Mr. Foster's office with Mr. Watkins?

19 A No, sir, not that I recall.

20 Q Have you ever discussed the topic of the
21 entry into Mr. Foster's office after his death on the
22 evening of the 20th or early morning hours of the

1 21st with the First Lady?

2 A No, sir, not that I recall.

3 Q Have you ever discussed the circumstances
4 of the review of the documents in Mr. Foster's office
5 with Mr. Nussbaum?

6 A Other than the one meeting where he showed
7 me --

8 Q The note.

9 A -- the note, no, not that I recall.

10 Q Have you ever discussed that subject, the
11 review of the documents in Mr. Foster's office with
12 anyone who attended that review?

13 A No, sir, not that I recall.

14 Q I take it, as you sit here today, anything
15 you may know about what happened in that review,
16 other than what Mr. Nussbaum indicated to you, as you
17 discussed the note with him is based upon press
18 reports or other public information?

19 A Yes, sir.

20 Q Did you ever become aware through any
21 source that the Department of Justice and the White
22 House had some disagreement about how to handle the

1 review of the contents of Mr. Foster's office?

2 A Other than through press reports, no.

3 Q But you've never discussed that topic with
4 anyone?

5 A Not that I recall, no, sir.

6 Q There were a certain number of press
7 briefings in the months following Mr. Foster's death
8 by Dee Dee Myers, by Mr. Gearan and later in time the
9 subject was touched on by the First Lady herself in
10 an April 22nd press briefing.

11 Have you ever discussed with anyone
12 statements that were made in those briefings relating
13 to Mr. Foster's death or the investigation or the
14 review of the contents of the office?

15 A You'd have to be more specific. I don't
16 know what statements -- I mean, for example, I don't
17 recall what the First Lady may have said in this
18 press conference. You have to be more specific.

19 Q In the April 22nd press conference -- I'm
20 sure I won't quote it exactly so let me just use it
21 as a topical suggestion -- the First Lady indicated
22 that she didn't believe Maggie Williams removed any

1 documents from Mr. Foster's office. Did you ever
2 discuss that with anyone?

3 A No, not that I recall.

4 Q Have you ever had any conversations with
5 Mike Spafford, one of the Foster family attorneys?

6 A No, sir.

7 Q Have you ever had any conversations with
8 Mr. Hamilton, one of the Foster family attorneys?

9 A I have talked to Jim Hamilton before.

10 Q Have you talked to Mr. Hamilton in any way
11 in connection with the investigation into
12 Mr. Foster's death, or the handling of the contents
13 in Mr. Foster's office?

14 A The way you phrased the question, it has a
15 complicated answer. Lisa Foster, Mr. Foster's widow
16 is a very good friend of mine and someone that I care
17 about. And so I have talked to Mr. Hamilton about
18 her well-being and assistance I can render,
19 et cetera. I have done that.

20 I have not spoken, not that I recall, with
21 Mr. Hamilton about specifics of anything,
22 particularly the specifics of the investigation. I

1 don't know how to answer it better than that.

2 Q You don't have any recollection of talking
3 to Mr. Hamilton about what may or may not have been
4 removed from Mr. Foster's office, like that, or
5 anything --

6 A I do not recall.

7 Q Mr. Kennedy, again, I don't mean this
8 question as a test of your memory or a way to impeach
9 any testimony that you may have given in a prior day,
10 but as we sit here today, are there any events about
11 which you have knowledge relating to the
12 investigation into Mr. Foster's death or the handling
13 of the documents in his office that we have not
14 discussed?

15 A The way you phrased that question, the
16 answer is generally no, but as you might expect, I
17 mean, I have talked to hundreds of people about Vince
18 Foster. I've had hundreds of people ask me why did
19 he do it, for example. I've had hundreds --
20 literally hundreds of people, you know, what do you
21 think was the suicide, et cetera, et cetera,
22 et cetera.

1 So a question like have you ever discussed
2 this with anyone, I've given you truthful answers and
3 whatnot, but I want to give you the impression that
4 it's a very intense period in my life to, rounding it
5 out. I want to put that on the record, that I have
6 discussed this countless times with countless
7 people. Other than that, no, I think you've hit the
8 high points and the low points, and you've covered my
9 participation.

10 MR. JOHNSON: Thank you, Mr. Kennedy, very
11 much for your patience. Mr. Kravitz will have some
12 questions and at the end of that, I'd like to say a
13 word about confidentiality, but I'm personally
14 grateful for your time this morning.

15 MR. KRAVITZ: Why don't we take about a
16 five-minute break. That will probably make this
17 shorter in the long run.

18 (Recess.)

19 EXAMINATION

20 BY MR. KRAVITZ:

21 Q Mr. Kennedy, my name again is Neal
22 Kravitz. I'm counsel to the Democratic members of

1 the Special Committee. I'm going to try as hard as I
2 cannot to be repetitive in my questions and I mostly
3 just want to ask some follow-up questions in some of
4 the areas that Mr. Johnson already covered.

5 You testified just before we broke that
6 since Mr. Foster's death, you've had some telephone
7 conversations with Jim Hamilton in which you've
8 offered your assistance or any assistance that you
9 could provide to Mrs. Foster. During any of the
10 conversations that you've had with Mr. Hamilton, did
11 Mr. Hamilton say anything to you about anything that
12 he might know on the subject of why Mr. Nussbaum did
13 not find Mr. Foster's note during the initial review
14 of Mr. Foster's office?

15 A No.

16 Q I want to ask you a few questions about the
17 boxes of materials from Mr. Foster's office during
18 the time period that those boxes were in your office
19 in the Old Executive Office Building. Am I correct
20 that those boxes were in your office between sometime
21 in November 1993 and sometime in April 1994 or
22 thereabouts?

1 A Yes.

2 Q And was it your testimony that during that
3 time period, that entire time period, you never
4 looked in any of the boxes in your office?

5 A The answer is generally yes. I obviously
6 had to open one of them to put the tapes and stuff
7 in, and so I opened one, but I did not undertake a
8 review of the contents of those boxes.

9 Q So your memory is that the only time you
10 opened any of the boxes from Mr. Foster's office
11 during the time period they were in your office was
12 when you opened one box to add the tapes from
13 Ms. Gorham's computer?

14 A Yeah. I may have opened them another time
15 to -- I think probably about the time that people
16 were beginning to want them, I think I opened them up
17 to be sure that the inventory that was supposed to be
18 in there was in there, but basically what I'm trying
19 on convey to you is I did not review what was in
20 those boxes.

21 Q When you say on or about the time that
22 people were beginning to want them, are you referring

1 to investigators?

2 A Well, the period of time that led to the
3 Cerf memo and Castleton memo.

4 Q But you're not referring to other White
5 House officials who wanted to get at those documents?

6 A Correct.

7 Q Did you ever remove anything from any of
8 the boxes that were in your office that had come from
9 Mr. Foster's office?

10 A No.

11 Q To your knowledge, did anyone remove
12 anything from any of those boxes during the time
13 period that the boxes were living in your office in
14 the OEOB?

15 A No; as far as I know, no one ever did.

16 Q Were those boxes sealed in any way?

17 A No. I mean, I don't think so. I think
18 they were just closed up with a little tape.

19 Q And to your knowledge, you never -- strike
20 that.

21 You never noticed that any of the tape had
22 been disturbed in any way?

1 A No.

2 Q You never saw anything that would indicate
3 to you that anyone had been in any of those boxes?

4 A No.

5 Q Were you able to tell what Mr. McLarty's
6 emotional condition was when you spoke with him on
7 the night of July 20, 1993, the first time after you
8 learned of Mr. Foster's death?

9 A I think he was pretty upset but, of course,
10 I didn't see him. I was talking to him over the
11 phone. We all were.

12 Q What makes you say that you think
13 Mr. McLarty was pretty upset?

14 A Just the way he sounded.

15 Q Can you describe what you mean by that?

16 A I don't know how. I mean, he sounded
17 upset, cracked voice. He sounded probably like I
18 did. This was a tremendous shock.

19 Q Had you ever heard Mr. McLarty sound like
20 that before the night of July 20, 1993?

21 A No.

22 Q Have you ever heard Mr. McLarty sound that

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1 way since that night?

2 A No.

3 Q What about Mr. Nussbaum, what did his
4 emotional condition appear to you to be when you
5 spoke with him on the telephone on July 20, 1993?

6 A Terribly upset.

7 Q Had you ever heard Mr. Nussbaum's voice
8 seem that upset at any time before that night?

9 A No.

10 Q Have you ever seen or heard Mr. Nussbaum
11 that upset at any time since the night of July 20,
12 1993?

13 A No.

14 Q What about Mr. Hubbell, when you spoke with
15 him on the telephone on the night of July 20, 1993,
16 could you tell what Mr. Hubbell's emotional condition
17 was?

18 A Stunned and shocked, upset, voice
19 breaking. I mean, as I say, it was a tremendous
20 shock to all of us.

21 Q In all the years you've known and worked
22 alongside Mr. Hubbell, had you ever seen or heard him

1 that way before?

2 A No.

3 Q Have you ever seen or heard him that way
4 since?

5 A No -- well, let me -- since you asked the
6 question that way --

7 Q I recognize he's had a lot of stuff to deal
8 with since then.

9 A The only other time I heard him sound that
10 way was in the courtroom the other day when he got
11 sentenced. That's the only other time I've heard him
12 come close.

13 Q I think one of the words you used to
14 describe the scene at the Foster's home on the night
15 of July 20 and early morning hours of July 21, 1993
16 was chaos or chaotic. Can you give us a little bit
17 more description of what it was like, how many people
18 were there, what people were doing?

19 A The Fosters live in a Georgetown townhouse,
20 which was not a very big Georgetown townhouse, and it
21 was a small space. And you know, people everywhere,
22 confusion everywhere, not enough telephones, people

1 desperate for telephones, couldn't find them. The
2 Foster family in just the worst kind of shape, most
3 of Vince's friends, myself included, in the worst
4 kind of shape, people in tears everywhere. I mean,
5 it was just a mess, just an absolute mess.

6 The Fosters' children were there. They
7 were devastated. People kept arriving as the news
8 spread. I mean, you just have to envision just a
9 constant surge of people into a very tight space and
10 not a lot of room to move around. It was hot. It
11 was a mess.

12 Q I apologize for making you go through
13 that. It is important for us to have a picture in
14 our mind of what it was like.

15 Mr. Johnson asked you some questions about
16 conversations that you had with Mr. Livingstone
17 regarding press reports that alleged that
18 Mr. Livingstone may have removed something from the
19 west wing of the White House on July 21, 1993. And
20 if he asked you this next question already, I
21 apologize, I must have missed it.

22 But did you personally see Mr. Livingstone

1 in the White House counsel's office at any time on
2 the morning of July 21, 1993?

3 A No, I don't recall doing so.

4 Q Did you personally see Mr. Livingstone
5 anywhere in the west wing of the White House on the
6 morning of July 21, 1993?

7 A No, I don't recall doing so.

8 Q Did you ever see Mr. Livingstone carrying a
9 box or a briefcase anywhere in the White House
10 grounds on the morning of July 21, 1993?

11 A No, I do not.

12 Q I just have one more set of questions. You
13 testified that at the White House on the day of July
14 21, 1993 there was, I think in your words, a lot of
15 disjointed activity because people were dealing with
16 the tragic news.

17 What was the White House counsel's office
18 like? What were people's emotional state on the
19 morning of July 21 in the White House counsel's
20 office?

21 A Of course, everybody would have to speak
22 for themselves, but Vince Foster was a great guy,

1 period. And he had made a large impression on the
2 people that didn't know him before. He was very well
3 thought of, very well liked, very well respected.

4 And so they probably did not experience the
5 same degree of loss that I had, but they were upset
6 and all the things that go with that, anxious and not
7 knowing what to do, upset and trying to convey to me
8 how sorry they were and trying to do their jobs all
9 at the same time.

10 Q As far as you were able to observe, how
11 long did this sense of great sadness, anxiety remain
12 among the staff members of the White House counsel's
13 office?

14 A Well, like everything else where human
15 beings are involved, it began to ebb. A couple days
16 anyway. I don't know where you guys were, the two of
17 you, but I've had a lot of people tell me that this
18 particular news, in even this town, stopped a lot of
19 people in their tracks. And it had a large impact on
20 not just the staff in the White House counsel's
21 staff, but the staff in the entire White House.

22 Q Did these intense emotional feelings shared

1 by White House staff members continue at least
2 through the day of the funeral on the 23rd of July,
3 as far as you could observe?

4 A I could only speak for the ones that I saw,
5 and the answer is yes.

6 MR. KRAVITZ: I have no further questions.

7 Thank you.

8 MR. JOHNSON: Mr. Kennedy, thank you for
9 your time. Thanks to your counsel.

10 The confidentiality of this proceeding is
11 extremely important to all of us, and we'd be
12 grateful if you wouldn't discuss the deposition here
13 today with anyone.

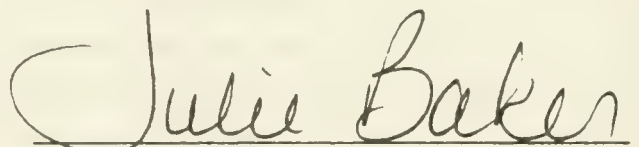
14 (Whereupon, at 12:34 p.m., the deposition
15 was concluded.)

16
17 -----
18 WILLIAM H. KENNEDY
19
20
21
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

116

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

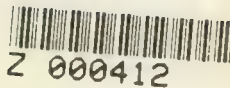
THE WHITE HOUSE
WASHINGTON

11/7/48

P. 24

This is a list of materials in Quier's office.
The contents have been packed and labelled
according to the location of these items.

The contents of his files in the cabinet
drawers will be forthcoming.

Z 000412

Clinton - Department of Justice

Ickes - Personal & Confidential (plus 10 copies w/ BUN as of 11/14/93)

Nepotism - Volume I

Nepotism - Volume II

Health Care Tort Reform

Clinton - Memo

Transition Notes

Transition - Vetting Notes

AG candidates

Miscellaneous

Clinton - Legal

Cabinet III

Residence Security

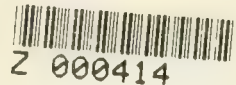
Sean Haddon matter

Bush - File Index

Cabinet IV

Stephen Breyer

Bruce Babbitt



Z 000414

3408

- 8 -

Loose

D.C. Income Tax Exemption

Tikkun Magazine

Immediate Attention

Dallas, Texas 04/29/93

Signature

Residence

Executive Residence Security

Updated 10/25/93



Z 000415

**DEPOSITION OF MICHAEL L. SPAFFORD
IN RE: S. RES. 120**

TUESDAY, JULY 11, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of MICHAEL L. SPAFFORD, called for examination pursuant to notice of deposition, at 5:45 p.m. in Room 640-A of the Hart Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

JAMES HAMILTON, Esq.
Swidler & Berlin, Chartered
3000 K Street, NW
Suite 300
Washington, DC 20007
On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Michael L. Spafford | |
| by Mr. Johnson | 3 |
| by Mr. Ben-Veniste | 126 |
| by Mr. Johnson | 140 |
| Errata | 3487 |

1 PROCEEDINGS

2 (5:45 p.m.)

3 Whereupon,

4 MICHAEL L. SPAFFORD

5 was called as a witness herein, and having been first
6 duly sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. JOHNSON:

9 Q Good afternoon, Mr. Spafford.

10 Thank you, first of all, for coming over
11 at this late hour. We've had an opportunity to meet
12 off the record, so very briefly, for the benefit of
13 the record, let me reintroduce myself.14 My name is Everett Johnson. I'm one of
15 the attorneys representing the majority members of
16 the Special Senate Committee. We're investigating
17 Whitewater and related matters.18 What brings us here today is Senate
19 Resolution Number 120, which creates that Committee
20 and authorizes the investigation into a number of
21 matters.

22 Specifically, what we'd like to talk about

4

1 today is the handling of documents in Mr. Vincent
2 Foster's office at or around the time of his death on
3 July 20, 1993.4 I'll cover a couple of other preliminary
5 things, but your counsel has indicated that he'd like
6 to make a couple of points for the record.7 MR. JOHNSON: Jim, now would be a good
8 time.

9 MR. HAMILTON: Okay.

10 For the record, I'm Jim Hamilton and I'm
11 representing Mr. Spafford in this matter.

12 I wanted to make three very brief points.

13 First of all, everything that Mr. Spafford
14 did in this matter, he did in the context of
15 representing clients. Consequently, much of what he
16 did is privileged, either by virtue of the attorney-
17 client privilege or the work product privilege with
18 the exceptions that we have agreed upon that I will
19 mention in a minute.20 Mr. Spafford will not talk about
21 privileged matters. He will not talk about
22 communications with the client. He will not talk

1 about internal firm communications. He will not talk
2 about our thought processes in evaluating
3 circumstances and events, and making decisions, and
4 he's not going to talk about our investigations that
5 we have undertaken to ascertain certain of the facts
6 regarding matters concerning our representation.

7 Now we have agreed that Mr. Spafford will
8 testify about certain writings that he prepared in
9 representation of his clients, the letter of about
10 July 22 and July 23, 1993, with the understanding
11 that, in doing, we don't waive the privileges.
12 That agreement is memorialized in a letter that I
13 wrote Mr. Johnson on July 10, 1995.

14 I would like a copy of that entered into
15 the record.

16 MR. JOHNSON: You know what, Jim? That's
17 certainly fine. Just as a matter of protocol, we are
18 not attaching deposition exhibits to the transcript.
19 We can identify them to the transcript later in time.

20 If you'd like to read that into the
21 record, that might be easier.

22 MR. BEN-VENISTE: We can attach this.

1 This is not a confidential document.

2 MR. HAMILTON: Actually, we did designate
3 it as a confidential document.

4 MR. BEN-VENISTE: Your letter?

5 MR. HAMILTON: Up here at the top, I did
6 designate it as confidential.

7 MR. BEN-VENISTE: Well, if you want to
8 make it a part of the record, this record is going to
9 be published.

10 MR. HAMILTON: It suits me fine that this
11 is part of the record, because I want the agreement
12 to be memorialized, so I think the easiest way is to
13 attach it.

14 The final thing I'd like to say is that we
15 submitted, to Mr. Chertoff, on June 20, 1995, an
16 inventory of documents we received from the White
17 House back in July of 1993.

18 There are a couple of corrections we need
19 to make to that inventory, and I think at the
20 appropriate time, you can ask Mr. Spafford about
21 that. I think we can hold those corrections now
22 because it might break the flow of the questions, but

1 I just wanted to note at the beginning there are a
2 couple of minor corrections that need to be made to
3 that inventory.

4 That's all I have.

5 MR. JOHNSON: Thank you.

6 BY MR. JOHNSON:

7 Q Mr. Spafford, as a preliminary matter, let
8 me ask you whether or not you've been deposed before,
9 and I don't mean only in connection with this case,
10 but just generally, were you ever given a deposition?

11 A Yes.

12 Q Let me just remind us together of a couple
13 of procedural things that will make it more
14 efficient.

15 Since a verbatim transcription of this is
16 being made, it's important that we not speak
17 simultaneously. So I'll try and remember, and if you
18 do too, we'll be more efficient.

19 Similarly, it's important to recall that
20 you need to answer verbally and not with gestures or
21 other sorts of non-verbal communication.

22 If you'd like to take a break or confer

1 with counsel at any time, feel free to say so.

2 And if, at any time, the question I have
3 asked or Mr. Ben-Veniste asks is unclear, we'll rely
4 on you a little bit to tell us that you don't
5 understand the question and just say so freely, and
6 we'll bring it back around to something that is
7 understandable.

8 I take it you've had an opportunity to
9 meet and confer with your counsel, Mr. Hamilton, in
10 preparation for this deposition.

11 Is that correct?

12 A Yes.

13 Q Other than Mr. Hamilton, have you
14 discussed the deposition that you would give here
15 today with anyone?

16 A Just my secretary to let her know that I
17 would be here, and my wife, but I assume you're not
18 interested in that?

19 Q I'm not. You assume correctly.

20 Could you just take 30 seconds, a minute,
21 and tell us about your professional education and
22 background?

1 A I attended college at the State University
2 of New York at Binghamton, and graduated with a
3 double major in philosophy and history, went to law
4 school at Duke University, graduating in 1983,
5 accepted a job in the fall of 1983 with the New York
6 law firm of Olwine, Connell, Chase, O'Connell and
7 Wein, and worked at Olwine.

8 Q Were you in the New York office?

9 A I was in the New York office, and I was in
10 the New York office until about three years ago, when
11 I moved down to Washington, D.C., and accepted a
12 position as a partner with Swidler & Berlin, and have
13 been at Swidler & Berlin since.

14 Q Your best recollection is you joined
15 Swidler & Berlin some time in 1992, is that correct?

16 A That's correct.

17 Well, I moved with Jim Hamilton, and he
18 reminded me that it was 1991.

19 Q Thank you.

20 After graduating from Duke University Law
21 School in 1983, you, I take it, did not embark about
22 a judicial clerkship?

10

1 A No.

2 Q And in your approximately eight or nine
3 years with Olwine, were you an associate or a partner
4 or both?

5 A An associate.

6 Q What area of practice do you concentrate
7 in, Mr. Spafford?

8 A Litigation.

9 Q Has that been true throughout the entirety
10 of your private practice career?

11 A Yes.

12 Q In the course of your litigation practice,
13 have you, from time to time, participated in document
14 productions?

15 A Yes.

16 Q Do you regard yourself as very
17 experienced, or moderately experienced in the area of
18 document production and document review?

19 A Let's just say I'm proficient in the
20 procedures and the manner in which documents are
21 produced.

22 Q And in your experience in litigation

1 practice, have you, from time to time, confronted
2 issues in document productions of attorney-client
3 privilege?

4 A Yes.

5 Q Do you have any experience in criminal
6 practice, either as a prosecutor of some type, or as
7 a defense attorney?

8 A Well, in the course of my practice, I have
9 advised clients on some criminal matters. So when I
10 speak generally in terms of litigation, it is
11 commercial litigation in a civil and criminal
12 context.

13 Q Is there any area of special focus within
14 commercial litigation, or are you a broad-based
15 commercial litigator?

16 A I'd say broad-based, although, in recent
17 years, I've specialized in representing accounting
18 firms in connection with parallel litigations and
19 government investigations.

20 Q Primarily in the securities area or the
21 professional liabilities area?

22 A Both.

1 Q Focusing now on your years with your
2 current firm, Swidler & Berlin, is there a partner or
3 a group of partners with whom you work most
4 frequently?

5 A Jim Hamilton.

6 Q Mr. Hamilton is a litigator as well?

7 A That's correct.

8 MR. JOHNSON: It's not that we didn't know
9 that, Mr. Hamilton. It's just that he's got to admit
10 it under oath.

11 MR. HAMILTON: I'm just pleased he'll
12 swear to that.

13 (Laughter.)

14 BY MR. JOHNSON:

15 Q Mr. Spafford, what involvement, if any,
16 did you have in the Clinton presidential campaign in
17 1992?

18 A None.

19 Q It follows, therefore, that you had no
20 involvement in the transition team as well?

21 A That's correct.

22 Q Did you ever apply for or otherwise get

1 considered for a job in the Clinton Administration?

2 A No.

3 Q Are you a registered voter?

4 A Yes.

5 Q Are you a republican or democrat?

6 A Democrat.

7 Q What's your State of residence?

8 A Virginia.

9 Q Mr. Spafford, a lot of the questions that
10 I'll ask you will focus on the time period roughly
11 mid-to-late July of 1993. I say that now just
12 because I sometimes forget to state that in the
13 questions, so if there's any ambiguity about the time
14 frame, please feel free to state so.

15 Also, you can assume, for purposes of most
16 of the questions, unless otherwise stated, we're
17 focusing on July of 1993.

18 Without revealing any attorney-client
19 communications, can you tell us please who your
20 client was that brought you to the White House in
21 connection with the investigation of the death of Mr.
22 Foster?

1 A The Foster family, specifically Lisa
2 Foster, his sister and his children, among others.

3 Q Again, being cautious on all of these not
4 to reveal any confidential communications, did the
5 Foster family retain you personally, or someone else
6 at the law firm of Swidler & Berlin?

7 A Jim Hamilton was the lead attorney.

8 Q Can you say, with any precision, a date on
9 which Mr. Hamilton or your law firm were retained by
10 the Foster family?

11 A No. I can only tell you when I got
12 involved.

13 Q When did you get involved?

14 A The day before the search, and the search
15 was on the 22nd, so the 21st.

16 Q That would be Wednesday, July 21st, is
17 that correct?

18 A That's correct.

19 Q To the best of your knowledge, did Swidler
20 & Berlin or Mr. Hamilton represent the Foster family
21 prior to Mr. Foster's death on July 20th?

22 A I don't know the answer to that.

1 Q You had not personally worked on any
2 matters in connection with the Foster family prior to
3 the 21st, is that correct?

4 A That's correct.

5 Q Let me go through a list of names here,
6 but the question is really the same for all of them,
7 and that is whether or not you knew them personally
8 prior to July 21st, 1993.

9 Bernard Nussbaum?

10 A No.

11 Q Steve Neuwirth?

12 A No.

13 Q Cliff Sloan?

14 A No.

15 Q A Department of Justice official by the
16 name of Margolis?

17 A No.

18 Q What about Mr. Adams from the Department
19 of Justice?

20 A No.

21 Q Had you met the President or the First
22 Lady?

1 A No.

2 Q I think you said that you first became
3 involved in any matters involving the Foster family
4 some time on Wednesday, July 21st, is that correct?

5 A That's correct.

6 Q Again being cautious not to disclose any
7 confidential client --

8 Strike that.

9 I'm sorry.

10 Being cautious not to disclose any client
11 confidences, can you tell us how you came to be
12 involved on the 21st?

13 A Well, I'm not going to get into
14 conversations I had with Jim. Suffice it to say that
15 I became aware that I would be present on the 22nd at
16 the search and I made arrangements to be there the
17 next morning.

18 Q What time of day do you think you became
19 aware, on the 21st, that you would be physically
20 present at the White House on the 22nd?

21 A I became aware it was a possibility some
22 time during the day, and it was firmed up by the end

1 of the day. I don't remember the exact time.

2 Q On the July 21st, excluding any
3 conversations that you may have had with Mr. Hamilton
4 or your clients, members of the Foster family, did
5 you have any conversations with anyone else relating
6 to your representation of Mr. Foster's family?

7 A No.

8 Q You didn't speak with anyone at the White
9 House or anything of that kind?

10 A No.

11 (Discussion off the record.)

12 BY MR. JOHNSON:

13 Q I think, Mr. Spafford, that the last
14 question I asked you was that, other than
15 conversations you may have had with Mr. Hamilton or
16 your client, did you discuss, on the 21st, the fact
17 that you would be going to the White House on the
18 22nd with anyone else, and you said no to that, is
19 that correct?

20 A Yes.

21 Q What's the next thing that you recall
22 happening in connection with your representation of

1 the Foster family?

2 A I arrived at the White House a little
3 before 10:00 o'clock on the 22nd, was led into the
4 West Wing lobby.

5 Q By whom?

6 A Well, I checked myself in the front gate
7 on Pennsylvania Avenue, and then walked in and
8 introduced myself to the receptionist, and sat there
9 for about an hour.

10 Q You sat in the West Wing lobby for about
11 an hour, is that correct?

12 A Read every newspaper they had.

13 Q Was anyone else sitting there?

14 A A Secret Service agent. That's about all
15 I remember.

16 Q By Secret Service agent, do you mean the
17 guard standing post in that lobby?

18 A That's correct.

19 Q While sitting in the lobby, did you have
20 an occasion to observe --

21 Strike that.

22 Did you have any conversations with anyone

1 during that hour regarding Mr. Foster's death, or the
2 investigation into Mr. Foster's death?

3 A No.

4 Q What physically happened?

5 Did someone come down and say, please have
6 a seat and we'll be right with you, or did you just
7 sit right down and wait?

8 A The receptionist dialed upstairs and she
9 said they'd be down momentarily or in a little bit,
10 something like that, and to have a seat, so I did.

11 Q When you say dialed upstairs, to where?

12 A Well, I'm making an assumption, but she
13 implied that it was to the White House Counsel's
14 Office.

15 Q Who did you ask for when you arrived?

16 A Mr. Nussbaum.

17 Q So you sat and read newspapers for about
18 an hour. That would make it more or less 11:00 a.m.
19 on the morning of the 22nd.

20 Is that correct?

21 A That's correct.

22 Q Then what happened?

20

1 A Then I believe it was a secretary, I'm not
2 sure, came down and asked me to come upstairs to the
3 White House Counsel's Office in the anteroom there
4 where the secretaries are. And I sat at a
5 secretary's desk for probably about another hour.

6 At some point, Mr. Nussbaum came in and
7 introduced himself, and said he'd be with me as soon
8 as he could.

9 Q During this second hour, you were
10 physically situated inside the White House Counsel's
11 suite, is that correct?

12 A Yes.

13 Q And you sat in the anteroom in the
14 secretaries' area?

15 A That's correct.

16 Q Did you see anyone there that you
17 recognized?

18 A When Mr. Nussbaum came in and introduced
19 himself, he was with Cliff Sloan and Steve Neuwirth
20 and I was introduced to them at that time as well.
21 There were a couple of secretaries there, and at some
22 point during the next hour, Mr. Margolis and some of

1 the investigators walked in.

2 I was not introduced to them at that time.

3 I didn't know who they were. But later, when I was
4 introduced, I connected up that that's who they were.

5 They basically just wanted to know what was the
6 status when they were going to move forward, and said
7 they'd be waiting downstairs.

8 Q Who did Mr. Margolis or the investigators
9 ask that of?

10 A Mr. Nussbaum.

11 Q What if anything did Mr. Nussbaum say?

12 A I don't remember the exact words. The
13 gist of it was, we'll get to you in a few minutes.

14 Q Just based on your observation, could you
15 tell whether or not Mr. Margolis and the
16 investigators were agitated or frustrated?

17 A I couldn't tell.

18 Q Nothing about their demeanor indicated
19 that to you?

20 A No.

21 Q Now when you arrived at the U.S. Counsel's
22 Office, more or less about 11:00 o'clock that

1 morning, was Mr. Nussbaum in his office?

2 A No. Well, I'm not sure. At some point,
3 he came in and introduced himself, and I'm not sure
4 whether he came out of his office or another
5 direction, because I believe I was reading a
6 newspaper or a magazine or something. He just came
7 up to me and said, Mike Spafford, I'm Bernie
8 Nussbaum.

9 Q He was accompanied by Mr. Sloan and Mr.
10 Neuwirth at that time?

11 A That's correct.

12 Q After he introduced himself to you and
13 said, we'll be with you as soon as we can, did you
14 see where he went?

15 A I believe he went into this office.

16 Q Did Mr. Sloan and Mr. Neuwirth go with
17 him?

18 A I believe so, yes.

19 Q Did they, I realize this seems so tedious,
20 did they close the door, leave it open, or did you
21 see?

22 A I might have seen it at the time, but I

1 don't recall.

2 Q You don't have any recollection as you sit
3 here today?

4 A Yes.

5 Q Were you able to overhear any of their
6 conversation in that office?

7 A No.

8 Q Other than being introduced to you and
9 sort of ordinary cordialities, did Mr. Sloan or Mr.
10 Neuwirth say anything to you when you first met them
11 on that morning?

12 A Not at that time, no.

13 Q Did you know anything about either Mr.
14 Sloan or Mr. Neuwirth?

15 A No.

16 Q You estimated that you sat there in the
17 vicinity of an hour, which would make it sometime in
18 the vicinity of noon that the next thing happened.
19 Is that correct?

20 A Yes.

21 Q What is the next thing that happened?

22 A Around noon, Mr. Nussbaum ordered lunch

1 from I assume it was the White House mess, and called
2 me into his office and we then had a conversation,
3 Mr. Sloan, Mr. Neuwirth, Mr. Nussbaum and myself.

4 Q Anyone else?

5 A No.

6 Q Okay. Were all of you eating lunch during
7 that conversation?

8 A I believe I was the only one not eating
9 lunch. I was trying to lose some weight at the time.

10 Q You seem to have succeeded.

11 What do you recall about that conversation
12 in Mr. Nussbaum's office?

13 A Other than just niceties about background
14 and things like that, in terms of introduction, Mr.
15 Nussbaum talked about how he envisioned the search
16 going.

17 Q Let me just interrupt you at that point.
18 I should have asked, did you personally keep any
19 notes of that conversation?

20 A No.

21 Q In your observation, did anyone else make
22 any notes during the conversation?

1 A No.

2 Q I'm sorry that I interrupted you.

3 A Mr. Nussbaum related that he did not know
4 what was in Mr. Foster's office, that he was aware of
5 some of the things that he had been working on, but
6 he wasn't sure everything that was in the office
7 that, given Mr. Foster's active involvement in the
8 White House Counsel affairs, he was sure there were
9 privileged materials in there, both Executive
10 privileged and attorney-client privileged work
11 product materials.

12 He also opined that there may be personal
13 things in there that may raise a host of issues. He
14 expressed concern about safeguarding the privileges
15 and he was concerned that if anyone other than
16 counsel looked at the documents, it might be
17 construed as a waiver.

18 He said he viewed the search as basically
19 to look for a suicide note or evidence relating to
20 that, so he proposed to do the search in the
21 following manner:

22 He proposed to review the documents in the

26

1 presence of investigators, to generally describe the
2 contents of the documents, but not to allow anyone to
3 look at them.

4 And then, as he said, we'll take it as it
5 goes and we'll see what comes out.

6 He asked me if I agreed with that approach
7 or had any comments. I said that sounded reasonable
8 to me.

9 He also said that if there were personal
10 materials, he would like for me to take them with me
11 and to deal with the investigators directly, since I
12 was the lawyer for the family.

13 That was, and there was some general
14 conversation along those lines.

15 Q Is that basically what you recall of the
16 meeting?

17 A Yes.

18 Q Did Mr. Nussbaum indicate, one way or the
19 other, whether or not he had been in Mr. Foster's
20 office?

21 A I believe my memo reflects a comment made
22 to me by Steve Neuwirth, but other than that, I don't

1 recall Mr. Nussbaum saying that he had been in the
2 office.

3 Maybe if I could see my memo?

4 Q Are you referring to your July 23rd
5 typewritten memorandum?

6 A Yes.

7 (Handing document to witness.)

8 THE WITNESS: Yes. The second paragraph
9 of my July 23rd, 1993 memo states: According to
10 Steve Neuwirth, Mr. Nussbaum entered the office
11 Tuesday night some time after 10:00 p.m., and made a
12 cursory review of the office, looking for a suicide
13 note. None was found, nothing was removed.

14 A guard then was posted by the Secret
15 Service, and the office was sealed. No one
16 subsequently entered the office until today at
17 approximately 1:15 when, in the presence of the
18 aforementioned officials, Mr. Nussbaum sealed the
19 office.

20 Those statements are statements that were
21 made to me by Mr. Neuwirth.

22 BY MR. JOHNSON:

1 Q I'll come back and go through your memo, I
2 hope with some care, but were these statements made
3 to you in the more or less noon meeting in Mr.
4 Nussbaum's office, or were they made to a larger
5 group in Mr. Foster's office later that day?

6 A It was at the noon meeting, except let me
7 qualify that in this way.

8 We came in and we sat down to talk about
9 the privileges and the way the search was going to be
10 conducted. Lunch was brought in. We ate lunch, and
11 then before the investigators were brought up, we'd
12 kind of broken up, and I was talking to Steve
13 Neuwirth individually in that office, and that's when
14 he made those comments.

15 Q Just to fix it in time, did you remain in
16 Mr. Nussbaum's office from the time you entered, in
17 the vicinity of noon, until the review began in Mr.
18 Foster's office some time later?

19 A Yes.

20 Q Did Mr. Nussbaum, Mr. Sloan and Mr.
21 Neuwirth also remain during the entire time?

22 A I can't say for sure. I believe so. I

1 mean, at some point, Mr. Nussbaum left to go get the
2 investigators to bring them upstairs to conduct the
3 search, or at least to tell the secretary to go get
4 them.

5 Q But is it your general recollection that
6 all four of you were there for the hour or so?

7 A Generally, yes.

8 Q Did Mr. Nussbaum indicate to you, at any
9 time, whether or not anyone else had entered Mr.
10 Foster's office prior to the review?

11 By anyone else, I mean anyone other than
12 Mr. Nussbaum had entered the office prior to the
13 review on the afternoon of the 22nd?

14 A No.

15 Q Did he state to you that no one else had
16 entered the office?

17 A He didn't make a statement one way or the
18 other.

19 Q Did you form any impression, one way or
20 the other, based on anything he had said?

21 A No.

22 Q I realize that my last question was

30

1 probably more imprecise than usual, because you
2 earlier said, based upon your review of your
3 memorandum, that it was perhaps Mr. Neuwirth who told
4 you that Mr. Nussbaum was in that office the
5 preceding night.

6 Is that correct?

7 A That's correct. I think your question was
8 precise because you asked me whether or not Mr.
9 Nussbaum had said anything, and I said no.

10 Q Now I want to ask the same question with
11 respect to Mr. Neuwirth.

12 Did Mr. Neuwirth indicate to you whether
13 or not anyone other than Mr. Nussbaum had entered Mr.
14 Foster's office prior to the review that would take
15 place on the afternoon of the 22nd?

16 A No. What Mr. Neuwirth indicated to me is
17 reflected in my memo.

18 Q Did he affirmatively represent to you that
19 no one other than Mr. Nussbaum had been in that
20 office?

21 A No.

22 MR. BEN-VENISTE: Can I have that question

1 and answer read back, please?

2 (Readback.)

3 BY MR. JOHNSON:

4 Q Did either Mr. Nussbaum or anyone else
5 indicate to you whether or not there had been
6 discussions with the investigators or representatives
7 of the Department of Justice about the review
8 procedures that Mr. Nussbaum had described?

9 A The impression I got was there that there
10 had been some discussions.

11 Q Why did you have that impression?

12 A That was just the impression I had from
13 the tenor of some of his comments. I can't remember
14 anything specific.

15 Q Did you have the impression from those
16 same comments that the Department of Justice and the
17 investigators agreed with the review procedure that
18 Mr. Nussbaum had described?

19 A No, quite to the contrary, I had the
20 impression that there may have been some discussions
21 but that nothing definitive had been decided.

22 Q Why did you form that impression? Did Mr.

32

1 Nussbaum say that?

2 A No. Because the tenor of the conversation
3 over the lunch hour was, these are my concerns. You
4 know, I've thought about this, this is the way I
5 think they ought to go, what do you think.

6 So the premise of the conversation was
7 nothing had been decided. This is the way I think we
8 ought to go, these are the things I'm concerned
9 about. Do you have any issues that I should be
10 thinking about, do you disagree.

11 Q Did he say the Justice Department doesn't
12 like this, doesn't want to do it this way, or words
13 to that effect?

14 A No.

15 Q Did he indicate to you, one way or
16 another, whether or not he had conferred with the
17 First Lady or any member of the First Lady's staff
18 about the review procedures?

19 A No.

20 Q It was clear to you, I take it, based upon
21 this conversation in Mr. Nussbaum's office that under
22 the review procedures he was proposing, only Mr.

1 Nussbaum would be allowed to see the documents in the
2 office?

3 A Mr. Nussbaum or members of his staff.

4 Q You at least understood that Park Police
5 investigators would not be allowed to review the
6 documents. Is that fair?

7 A Yes.

8 Q And the same would be true of the FBI and
9 the Department of Justice representatives?

10 A And myself, yes, qualifying of course
11 except on the latter with respect to myself, if it
12 related to personal issues.

13 Q Did you understand that there were any
14 documents at all that the Park Police, FBI, or
15 Department of Justice representatives would be
16 allowed to review?

17 A Well, given the context of the
18 conversation was about privilege, about
19 confidentiality, I assume that if there were some
20 documents in there that were not privileged or
21 confidential, that that may have been an issue.

22 And in fact, later on, when they went

1 through some documents, for example, there was a map
2 of Washington, D.C., and Mr. Margolis wanted to know
3 if Ft. Marcy was circled. I believe at that point in
4 time, Mr. Nussbaum opened it up, looked at it, and
5 said, no.

6 And that was available for them to look
7 at.

8 Q Now in the course of this meeting or
9 conversation in Mr. Nussbaum's office between about
10 noon and 1:15, if I've set the times right, on the
11 afternoon of the 22nd, did you have any private
12 conversations with Mr. Sloan?

13 By private, I mean other than in the
14 entire group.

15 A I remember exchanging, at some point, some
16 niceties with Mr. Sloan about the fact that he
17 worked, previously, with Mayor Brown, and had been an
18 attorney for a while, those types of general issues.

19 MR. HAMILTON: Excuse me, Kip, what was
20 the time frame of that question?

21 MR. JOHNSON: In the noon to 1:15 period
22 of time, unless I've missed something.

1 BY MR. JOHNSON:

2 Q Unless I've missed something, you hadn't
3 had any conversations with Mr. Sloan prior to that
4 period of time, is that correct?

5 A That's correct.

6 Q You indicated, in response to some earlier
7 questions, that you may have had some one on one
8 conversations with Mr. Neuwirth as well. Is that
9 correct?

10 A Yes.

11 Q That's when Mr. Neuwirth told you that Mr.
12 Nussbaum had entered the office the preceding
13 evening?

14 A That's correct.

15 Q Do you remember anything else that you and
16 Mr. Neuwirth discussed?

17 A Other than the fact that I became aware
18 that he had worked previously at Wachtell, Lipton,
19 which happened to be in the same building that I
20 worked in in New York, so we talked a little bit
21 about the fact that I was from New York, he was from
22 New York.

36

1 Q Do you recall any other conversations
2 occurring in this noon to 1:15 time period that we've
3 been describing in Mr. Nussbaum's office that we
4 haven't touched on?

5 A No. As long as it's understood, other
6 than the 1:15, which is recorded on my memo, the noon
7 is an approximation.

8 Q If, at any time, it's useful for you to
9 refer to the memorandum, feel free. I'm going to
10 turn to it here in a moment. It's not a memory test,
11 so if it's helpful, look at.

12 (Handing documents to witness.)

13 BY MR. JOHNSON:

14 Q Did Mr. Nussbaum take or receive any
15 telephone calls during the period of time you were in
16 there?

17 A I don't remember one way or the other.

18 Q As you were sitting outside in the
19 anteroom, prior to going into Mr. Nussbaum's office
20 in the vicinity of noon, could you see the door to
21 Mr. Foster's office?

22 A Yes.

1 Q You had never been there before, I take
2 it?

3 A That's correct.

4 Q Was the door open or closed?

5 A It was closed, and there were seal tapes,
6 like the police line yellow tape, across it.

7 Q What's the next thing, Mr. Spafford, that
8 you recall happening after the conversations we've
9 been discussing in Mr. Nussbaum's office?

10 A The investigators were brought up, and
11 according to my memo, it's about 1:15 and Mr.
12 Nussbaum grabbed the tape, removed it from the door,
13 and opened the door to his office.

14 We all then proceeded into the office.
15 There's kind of a corridor and then it opens to the
16 right, and goes back. Mr. Nussbaum, Mr. Sloan, Mr.
17 Neuwirth, and Mr. Burton, who had came up about that
18 time and I was introduced to just prior to when the
19 door was open, went behind the desk, and then Mr.
20 Margolis and the other Justice Department guy, whom
21 my memo says is Mr. Adams, took the two seats right
22 in front of the desk.

1 Two Park Police guys were behind them on
2 the couch.

3 Two FBI gentlemen were in chairs right
4 behind or next to the Park Police.

5 And then the Secret Service were behind
6 them.

7 I stood to the left of the desk in front
8 of it against the wall.

9 Q You say to the left. Do you mean as
10 facing the desk, you would be on the left hand side?

11 A That's correct. There was a credenza or
12 something right there, and I used that to write on.

13 Q Was there anybody standing behind the
14 desk?

15 A Mr. Nussbaum, Mr. Neuwirth, Mr. Sloan, and
16 Mr. Burton were all behind the desk.

17 Q It may be impossible to recall, but do you
18 recall where they stood?

19 A You had a desk and you had a credenza.
20 Mr. Nussbaum is standing at the desk facing out, so
21 there's a credenza on his right, and then there's
22 bookshelves and a credenza on the left. And behind

1 him was Burton, Sloan, and Neuwirth, but I'm not sure
2 where they were.

3 Q Do you have any recollection which of them
4 may have been closest to you, or did they move
5 around?

6 A They moved around a little bit. I don't
7 recall the order.

8 Q Before going into Mr. Foster's office, was
9 there any conversation between Mr. Nussbaum and the
10 investigators or the Department of Justice
11 representatives?

12 A Other than let's do it, let's go in, I was
13 not present when there was any other conversation, if
14 there was any.

15 Q In your presence, Mr. Nussbaum did not
16 describe the review procedures in the way that he had
17 described them to you. Is that correct?

18 A Well, when we got into the office, after
19 everybody took a seat, then Mr. Nussbaum opened up
20 the meeting by generally describing the manner in
21 which he proposed to proceed, saying that he was
22 concerned about the privileges, you know, Executive

1 privilege, attorney-client, work product, etcetera,
2 and that he felt this was the best way to proceed.

3 He said, we want to cooperate, but I don't
4 want to run afoul of these privileges.

5 Mr. Margolis then responded by saying, I
6 understand that these are legitimate concerns that
7 you have about the privileges, but I, on the other
8 hand, have a duty to investigate this. This is a
9 matter that we've been tasked to investigate and I
10 want to pursue that and all relevant matters.

11 There was a general discussion back and
12 forth, the outcome of which was basically an
13 agreement to proceed along the lines that Mr.
14 Nussbaum had outlined and see what came up.

15 Q As you were observing this, did you
16 understand Mr. Margolis to be objecting to Mr.
17 Nussbaum's proposed procedures?

18 A No. Mr. Margolis took a professional
19 approach, I thought it was a practical approach.
20 There are competing interests here. One the one
21 hand, the privileges, on the other hand, my duty to
22 investigate. Let's see if we can't strike a balance.

1 And that was the tone that Mr. Nussbaum had set for
2 the meeting, and that's the way it generally
3 proceeded.

4 Q That's helpful. Thank you.

5 Just to make sure, other than the
6 conversation you've just described at the beginning
7 of the review, while physically present in Mr.
8 Foster's office, you didn't overhear any
9 conversations between Mr. Nussbaum and the Department
10 of Justice representatives, while going into the
11 office or in the anteroom outside of the office?

12 A No.

13 Q Was it your impression, did Mr. Margolis
14 seem surprised to you at Mr. Nussbaum's proposed
15 procedures?

16 A No.

17 Q Other than Mr. Margolis and Mr. Nussbaum,
18 did anyone else speak about the procedures for the
19 review of the contents of the office?

20 A Mr. Margolis seemed to act as a spokesman
21 for the group. During the meeting or the search,
22 others made some comments, but at the outset, when

1 they were talking about the ground rules, Mr.
2 Margolis was speaking for the group.

3 Q What about on behalf of the White House?
4 Did anyone other than Mr. Nussbaum speak?

5 A No.

6 Q Mr. Spafford, you were, I take it,
7 actively making notes as these conversations went on.
8 Is that correct?

9 A Of that conversation I was more listening
10 than making notes. But if you look at my memorandum,
11 that was written on the 22nd when I returned from the
12 White House. It's dated the 23rd, because the next
13 day, I looked at it to clean up typos and our
14 computer automatically dates it.

15 So this memorandum was written on the
16 22nd, upon return from the White House to the office,
17 and it reflects what happened.

18 Q Your counsel's been kind enough to send
19 over handwritten notes that seem to me to be an
20 inventory or other notes of the meeting that we're
21 describing.

22 Are those your notes?

1 A Yes, they are.

2 Q Were those made contemporaneously with the
3 meeting in Mr. Foster's office?

4 A Yes.

5 Q Is that your ordinary practice in document
6 reviews or circumstances of this kind, to make notes
7 contemporaneously with the events?

8 MR. BEN-VENISTE: It may be hard to answer
9 about circumstances of this kind.

10 THE WITNESS: Let me just say that I
11 recognize that this was somewhat of a unique issue in
12 terms of a White House Counsel may have committed
13 suicide, so I decided to take copious notes.

14 BY MR. JOHNSON:

15 Q You made a conscious decision to take very
16 careful notes. Is that a fair statement?

17 A Yes.

18 MR. JOHNSON: Why don't we take a five-
19 minute break here?

20 (Discussion off the record.)

21 (Recess.)

22 BY MR. JOHNSON:

1 Q I think, Mr. Spafford, if I didn't
2 misunderstand you, you said that Mr. Margolis was the
3 spokesperson for the group at the beginning of the
4 meeting, but that other comments were made by other
5 members of the group sitting on the opposite side of
6 the desk from Mr. Burton during the course of the
7 review.

8 Do you recall today any of those comments?

9 A If you look at my notes, which reflect Mr.
10 Nussbaum's description of the documents that he went
11 through, you will see arrows, and in the margins, you
12 will see comments or questions.

13 Where you see arrows, those are documents
14 that the investigators, usually Mr. Margolis,
15 identified as documents of interest, things that they
16 would like to see.

17 Questions usually came from Mr. Margolis.
18 I think at one point in time, you see in my notes, on
19 page 1, 2, 3, 4, 5, one of the FBI agents asked a
20 question about the trash. He says can they look
21 through the trash.

22 And at the end, I believe Mr. Adams, if

1 you look at the second-to-last page of my notes,
2 well, maybe it was an FBI agent, it says FBI. Most
3 people leave notes. That comment which is reflected
4 in my typewritten memo.

5 Those are some of the comments that were
6 made by others, but I would say 90 percent of the
7 talking done by the investigators was done by Mr.
8 Margolis.

9 Q On the one annotation that you pointed
10 out, which says was ascribed to the FBI, can they
11 look through the trash, did the FBI ask to look
12 through the trash?

13 A That reflects his question, and then if
14 you look to the side there, M, he clearly waived this
15 abandonment. That's Mr. Margolis' comment.

16 Mr. Nussbaum responded to that saying
17 that, disputing that basically, that that was not
18 necessarily abandonment. He took more of a practical
19 approach.

20 He said, look, let's look through it,
21 let's see what's here. I'll describe it. And then,
22 as you see, I described, I set forth what he

1 described, an envelope credit union slips, receipts,
2 etcetera, etcetera.

3 Where you see the arrows are documents
4 that Mr. Margolis and the investigators said they
5 would like to look at, such as the credit union slip,
6 the receipts, the handwritten notes, re personal
7 items, things like that.

8 Q Were they shown those documents?

9 A Not at that time, no.

10 Q So just focusing on the trash.

11 A Just maybe as it proceeded, when he was
12 describing the documents, what developed was he
13 separated things into three piles so you had a pile
14 of personal documents, you had a pile of documents
15 that were of interest to the investigators that were
16 not personal, and then the other things he reviewed
17 that potentially were not interesting were put over
18 here, and he started on top of the desk, and he would
19 go through them.

20 And as my notes reflect, for example,
21 here's a list of telephone calls. Well, that went in
22 and Mr. Margolis said, well, why don't you start a

1 pile of documents that are of interest to us, so he
2 started that pile.

3 Then you went further down, and for
4 example, there's an envelope, a folder entitled
5 "Insurance," that went in the personal document pile.

6 And so you had three sets of documents,
7 and what came out of that was, and what was discussed
8 later was that I would gather up the personal
9 documents and take those back to my office, and would
10 deal with Mr. Margolis directly on that.

11 The documents of interest Mr. Margolis and
12 Mr. Nussbaum would discuss the manner in which those
13 may be or may not, you know, how they would be
14 reviewed.

15 Q Was everything in the office, to the best
16 of your observation, placed in one of those three
17 piles?

18 A No.

19 What happened was, he started on top of
20 the desk, and there were a lot of loose papers.
21 There was actually the out box was stacked pretty
22 high and he went through that. Then he went through

1 the drawers, and some of the drawers in the desk or
2 in the credenza were those green folders that he kind
3 of looked through them generally. They appeared to
4 have, what do you call those little tabs or whatever
5 on them, and he said, these are work-related general
6 counsel issues.

7 Mr. Margolis asked him to review those and
8 to describe to him generally the types of things he
9 would be interested in. He wanted to know if there
10 were any threats made to him, if there were any
11 indications that he was depressed or contemplating
12 suicide, any unusual items, and he kind of went
13 through a little bit of a litany, and he said, I'd
14 like you to review that and tell me if you come up
15 with any unusual items.

16 He said the same thing to me when I took
17 the personal documents and we talked later. He said,
18 I'd like you to look at this, and I told him I'd call
19 him the next day.

20 Q That's very helpful. Let me just see if I
21 understand it.

22 And the trash is a good example. Your

1 notes indicate and you recall that someone from the
2 FBI asked if they could look at the trash, is that
3 right? Is that what this note indicates to you?

4 A Yes. The note says, FBI, can they look
5 through the trash.

6 Q You also recall, based upon notes that
7 you've written here, that Mr. Margolis was saying the
8 trash can't be privileged, it's been abandoned, it's
9 been thrown out.

10 Is that what that note indicates?

11 A Yes. He was arguing that this constituted
12 abandonment and therefore it wasn't privileged.

13 Q Mr. Nussbaum didn't agree with that?

14 A That's correct.

15 Q Then Mr. Nussbaum went through the trash,
16 and as he went through it, if I'm reading your notes
17 correctly, Mr. Margolis or someone indicated that
18 they would like to see the credit union slip, certain
19 receipts, and handwritten notes re, and I'm having
20 difficulty reading that.

21 A That's personal, p-e-r-s, shorthand for
22 personal.

1 Q And they were not, as you observed, they
2 were not allowed to review those documents at least
3 while in the office on that day?

4 A That's correct.

5 Q And as you sit here today, do you know
6 whether they were ever allowed to review those
7 documents?

8 A Well, I believe all three of these were
9 determined to be personal matters and were put into
10 the box that I took with me. And the following week,
11 the Park Police came and reviewed every piece of
12 paper we took.

13 Q So you can testify that they did see
14 these?

15 A That's correct.

16 Q Did anyone say it was silly that they
17 couldn't look through the trash? Did anyone make any
18 comments to that effect?

19 A No.

20 Q According to recent press accounts, there
21 may have been --

22 Strike that.

1 As you made the handwritten inventory
2 here, did you try and use, to the best of your
3 ability, the words that Mr. Nussbaum used to describe
4 the documents in the office?

5 MR. HAMILTON: When you refer to an
6 inventory, you mean handwritten notes, I take it?

7 MR. JOHNSON: I do, Jim. Thank you.

8 THE WITNESS: Yes. But you have to keep
9 in mind that I was trying to keep up and stay alert
10 to what was going on, so I was using shorthand.
11 Given that understanding, yes.

12 BY MR. JOHNSON:

13 Q But your general goal was to have this
14 handwritten notes or inventory reflect Mr. Nussbaum's
15 description of the documents?

16 A That's correct.

17 Q These are not just your impressions, these
18 are your recollections at the time of what he said?

19 A That's correct.

20 Q We have read, among other things in press
21 reports recently, that there may have been a file in
22 Mr. Clinton's office entitled "Whitewater."

1 MR. HAMILTON: Mr. Clinton's?

2 MR. JOHNSON: I'm sorry, thank you.

3 BY MR. JOHNSON:

4 Q Mr. Foster's office entitled "Whitewater."
5 Is there, on your inventory, a file entitled
6 "Whitewater."

7 A Whitewater never came up. I don't
8 remember that word ever being mentioned and it's not
9 reflected. I don't see any reference to Whitewater.
10 There's a reference on the first page to documents
11 relating to First Family (Trust, etcetera), but I
12 don't remember Whitewater ever coming up.

13 Q Now when Mr. Foster reviewed the files,
14 did he call out the name of the file label?

15 A You mean Mr. Nussbaum?

16 Q Thank you, I'm sorry, I do mean Mr.
17 Nussbaum. When Mr. Nussbaum reviewed the files in
18 Mr. Foster's office, did he, to the best of your
19 observation, was he calling out the label of the
20 files?

21 A It depended. I mean, early on, he started
22 on the top of the desk, and he basically went

1 document by document and there were some files, for
2 example, you see down there a folder entitled
3 "insurance" on page one of my notes. Then he
4 described the contents as it progressed, and he got
5 into a couple of drawers of the desk or credenza that
6 had general counsel files topics.

7 You'll see, for example, later on he said,
8 yes, here it is, what is this, 1, 2, 3, 4 -- the
9 fifth page, second file drawer contains work files,
10 and then you see the comment to the right. M, which
11 is Margolis, look at it, and that reflects his
12 request to look at it and identify anything unusual.

13 Q I just want to be as clear as I can about
14 the procedure. You don't recall Mr. Nussbaum saying
15 the words Whitewater, here's a Whitewater file or
16 here are Whitewater documents at any time during this
17 review?

18 A I don't recall him saying that.

19 Q And if he had said that, would it have
20 been your objective in keeping these notes to write
21 that down?

22 A Yes.

1 Q I'm correct, am I not, that it is not
2 written down here anywhere?

3 (Pause.)

4 A It is not.

5 Q Let me just look at your notes for a
6 minute and perhaps raise a couple of questions. I
7 don't propose to sit here and attempt to read them
8 all but you've indicated that you had a method of
9 recording when questions were raised with respect to
10 particular documents.

11 The first one I see on page one of the
12 notes says, list of TC 7/20, which I take it to mean
13 telecom memos.

14 A Telephone calls, yes. Those related to
15 telephone calls received on the 20th.

16 Q Does the note, Margolis, next to that
17 indicate that Mr. Margolis wanted to see the list of
18 telephone calls from the 20th?

19 A Well, those are the documents that he
20 identified as potential interest to the investigators
21 and they went into the that pile.

22 Q Just to be clear, to the best of your

1 observation, neither Mr. Margolis nor anyone else was
2 allowed to review those at least during the meeting
3 on the 22nd, is that correct?

4 A That's correct.

5 Q Did this list of telephone calls go into
6 your personal documents that you reviewed later that
7 day?

8 A No.

9 Q So I take it, as you sit here today, you
10 don't know whether or not any of the investigators or
11 representatives of the Justice Department were ever
12 allowed to review those documents?

13 A No.

14 Q No, you don't know.

15 A No, I don't know.

16 Q It was a bad question which just led to
17 confusion. Sorry.

18 A Just so it's clear, the inventory that you
19 reviewed over the break is an inventory of all the
20 documents that were removed from the office that day.
21 So in terms of what documents we got and were
22 reviewed by the Park Police, that would be reflected

1 in the inventory.

2 Q Have you glanced at the inventory to see
3 whether or not this list of telephone calls is on
4 that?

5 A That's what I was just doing.

6 (Pause.)

7 It doesn't appear to be here.

8 Q The next entry, where you've indicated
9 that interest was expressed at the meeting, is
10 opposite the description "editorials." Are these
11 newspaper articles?

12 A Yes.

13 And Mr. Margolis, if you'll look to the
14 side, wanted to know if any of them were critical of
15 Mr. Foster.

16 Q Do you recall Mr. Nussbaum or anyone else
17 making a response to that inquiry?

18 A I don't recall a response. It would have
19 gone -- I don't recall a response.

20 Hang on just a second. I've got a lot of
21 memos here. I'm not sure I've looked at all of them.

22 (Pause.)

1 I don't recall a response.

2 Q Did Mr. Margolis ask to see the
3 editorials?

4 (Pause.)

5 A I'm not sure. The reason why I'm
6 hesitating is because I know, in the second box that
7 came over the next week, on the 27th, there were some
8 editorials, at least one from the Wall Street
9 Journal, that was critical of Mr. Foster and that's
10 the second box of personal documents that Mr.
11 Nussbaum sent to us on the 27th.

12 Whether or not that was one of these
13 editorials, I don't know, but I know that that was
14 shown to the investigators.

15 Q I may have misspoken a little bit. I
16 meant to ask whether, during the course of this
17 meeting on the 22nd, Mr. Margolis asked to look at
18 the newspaper editorials, if you recall?

19 A I don't recall one way or the other.

20 Q Now on the same page, which is the first
21 page of your handwritten notes, there appears a
22 little box to the right hand side.

1 Can you read what's in that box?

2 A It relates to the line that says "internal
3 correspondence re office duties." "M" is for
4 Margolis. He said what was the substance. Did
5 anyone say we'll hit you over the head. I remember
6 that. He said were there any threats.

7 And Mr. Nussbaum said no. He looked
8 through the documents and said no.

9 Q Also, I think it's about two or three
10 entries down, there's an indication on the left hand
11 margin which I can't read on the photocopy.

12 A It says "in folder entitled Insurance." I
13 remember that because Mr. Margolis, it does not
14 reflect it here, but I remember he said, is there a
15 life insurance policy in there.

16 And Mr. Nussbaum opened up the folder and
17 looked through it, and described the contents, which
18 you see to the right of that P&C, property and
19 casualty insurance, motor vehicle insurance.

20 Q Turning now to the next page of your
21 notes, about three-fourths of the way down, there's
22 an entry with two arrows, one on the left hand side

1 pointing right, and one on the right hand side
2 pointing left.

3 Can you read that entry?

4 A Name on page.

5 Q What does this note indicate to you?

6 A There was a name on a piece of paper that
7 nobody recognized.

8 Q Do you recall the name?

9 A No.

10 Q When you say nobody recognized, you mean
11 the name was stated in the room and no one recognized
12 it, or Mr. Nussbaum and the White House Counsel Staff
13 didn't recognize it?

14 A No. The name was stated and nobody
15 recognized it.

16 Q Next is indicated a map of Metro
17 Washington. Is this the event you described earlier?

18 A Yes. Mr. Margolis asked if Ft. Marcy were
19 circled on the map. It was folded up.

20 Mr. Nussbaum opened it up and said no.

21 This is the right top drawer. That's Mr.

22 Nussbaum's right as he's facing the investigators.

1 (Pause.)

2 Q Okay, over on the next page --

3 A Are we still on my handwritten notes?

4 Q On your handwritten notes, there's an
5 indication that says a dictaphone note tape and
6 then --

7 A There was a dictaphone I think in the
8 drawer. Mr. Nussbaum pulled it out and you see Mr.
9 Margolis' comment on the right. Have someone listen
10 to it very soon.

11 Mr. Nussbaum popped the dictaphone and
12 said, there's no tape.

13 Q Was there any discussion at that time
14 about whether or not there were other dictaphone
15 tapes perhaps outside of Mr. Foster's office that
16 ought to be listened to?

17 A I don't recall that coming up.

18 Q Then there's an indication here
19 immediately beneath that that says, briefcase. Can
20 you just take a moment, please, and explain your
21 various handwritten notes on that page as they relate
22 to the briefcase.

1 A When Mr. Nussbaum finished with the
2 drawer, he reached back and got the briefcase, which
3 was a black briefcase with what do you call those,
4 handles on the sides, put it up on the desk, took the
5 files out, put them on the desk, put the briefcase
6 back, and then Mr. Margolis, at that point, asked
7 him, and that's reflected to the right, a brief
8 question.

9 Did he carry briefcase all the time?

10 Nussbaum: No, used as file folder.

11 And then he proceeded to go through the
12 documents that he'd taken out of the briefcase, and I
13 ran out of room so I started going every which way,
14 but he started in the middle, and if you go down the
15 middle, and then there's a separate stack or line on
16 the left, then on the right.

17 Do you want me to read these?

18 Q If you would just read them out for me?

19 A Starting down the middle. Notebook of
20 notes of meetings, General Counsel issues, May
21 calendar. I believe Mr. Nussbaum said they had these
22 pre-printed Xeroxed calendars for the month that had

1 his appointments on them. Mr. Margolis was very
2 interested in that.

3 If you look to the right, you'll see "M.
4 Look at that." And that went into the document pile
5 of interest.

6 Then you have memorandum on expenditures,
7 gifts, memos on GC, General Counsel issues, notepad
8 with handwritten notes regarding General Counsel
9 issues, White House Travel Office management, that's
10 either rule or work, but I remember the Travel Office
11 coming up, some document relating to the Travel
12 Office.

13 Standards of ethical conduct. Something
14 relating to standards of ethical conduct.

15 Memo on Clinton presidential library.

16 Memo re gifts and ethics issues.

17 Correspondence re transition.

18 Memos re White House functions and the
19 inauguration or the inaugural.

20 Documents and legal opinions of the Office
21 of the Legal Counsel.

22 Then if you go to the left, there's a blue

1 file of memos.

2 Q What does the indication, 3, mean there?

3 A I was just trying to number these to give
4 sequence. If you look I have 1 as top of the desk.
5 2 is right top drawer. 3 is briefcase, and then I
6 number going through every time we go to a new area
7 in the office.

8 A blue file of memos, copies of newspaper
9 articles not about him. I think there was a question
10 at that point, was there anything about him, and the
11 answer was no.

12 The date, I think it's the 4/8 letter for
13 Hillary, Mrs. Clinton. We'll have to look at the
14 original and see what the number is there. It's
15 blocked out a little bit on there.

16 Q The date is hard for you to read? Is that
17 it?

18 A Yes.

19 And then the next notation is a
20 handwritten note.

21 Q Does that relate to the letter for Mrs.
22 Clinton or is that a different one?

1 A That's a different one. It's a different
2 document. But I'll check the original just to make
3 sure that there's nothing here.

4 Q Let me just stop you here for a second.
5 The 4/8 letter for Hillary, those are Mr. Nussbaum's
6 words that this is a letter --

7 A I think he said Mrs. Clinton. That's more
8 my shorthand.

9 Q Did you see that document? Did he hold it
10 up?

11 A No.

12 Q You don't have any impression today of
13 whether it was a handwritten or typewritten document?

14 A No.

15 Q Did anyone ask to see it?

16 A There's no indication here of an arrow or
17 anything so, no.

18 Q Then beneath that, there's an indication
19 that says handwritten note. Do you know any more
20 about that entry today?

21 A No.

22 Q Did Mr. Nussbaum say what the topic of

1 that note was, or anything that might indicate to the
2 investigators its content?

3 A No.

4 Q One purpose of the review, as Mr. Nussbaum
5 had stated to you, was to look for a suicide note.
6 This indicates that he maybe said, and here's a
7 handwritten note.

8 Your best recollection today is, no one
9 asked him what it said?

10 THE WITNESS: Jim, you have the original
11 notes, don't you? Let me look at those so I can see
12 what's in the margin.

13 (Handing document to witness.)

14 THE WITNESS: The implication in my mind
15 of this is that it related to General Counsel issues,
16 because I'm sure that's a question that would have
17 been asked or I would have asked.

18 Sitting here today, I don't have a
19 specific recollection.

20 BY MR. JOHNSON:

21 Q Can you tell me what on the document makes
22 you think it relates to General Counsel issues?

1 A Just because the investigators were
2 zeroing in on anything that related to motive. That
3 was their stated purpose up front. That is what is
4 reflected from my notes. And they were very thorough
5 and professional in the way they went about the
6 meeting.

7 So I find it hard to believe that they
8 would have not focused on it if it was anything other
9 than General Counsel issues.

10 Q It's proximity, and when you say they were
11 very thorough and professional, you're referring to
12 the investigators?

13 A Yes.

14 Q It's proximity in the note is at the right
15 hand margin of the line, it says GC issues, then on
16 the left hand margin of the line just below, it says
17 HW note. And from that, you infer that the
18 handwritten note was related to General Counsel
19 issues.

20 Have I got that right?

21 A Yes.

22 Q Have we now covered -- I'm sorry, maybe we

1 should continue down the left hand side.

2 A Yes, there's a letter to the Attorney
3 General Reno from Senator Dole, and I believe there
4 was a question.

5 And Mr. Nussbaum said that it mentioned
6 Mr. Kennedy. That's what that handwriting is.

7 Then there's copies of newspaper articles.
8 Again, there must have been a question because then I
9 have nothing personal to Mr. Foster.

10 Then there's a newspaper article about Mr.
11 Foster, 1/20, in the Atlanta Constitution, with a
12 picture of the White House Staff when announced.
13 Then there's a 1/3 article, Post article on
14 apartments.

15 Then if you go over to the right, you'll
16 see there's a log of correspondence.

17 Q I'm sorry, what's the entry that appears
18 just above that?

19 A That's the question I referred to
20 previously, where Margolis says, look at the May
21 calendar and the entries that are made on there.

22 Q Thank you.

1 MR. BEN-VENISTE: Did you say apartments
2 or appointments?

3 THE WITNESS: Apartments. That relates to
4 the Post article on apartments.

5 BY MR. JOHNSON:

6 Q Mr. Ben-Veniste raised a good point.

7 What's the date, January 3rd, is the Post
8 article on apartments?

9 A That's what I take from that, yes.

10 Over to the right, you've got logged
11 correspondence, receipts for travel, an open letter
12 to Mr. Foster from his law firm, that's the Rose law
13 firm.

14 Mr. Nussbaum opened the letter and it
15 included a resume, handwritten list of people from
16 law firm and that was in --

17 Q Handwritten list of people from law firm.
18 Would that be the names of the people mentioned?

19 A No.

20 Q Did Mr. Nussbaum say these are people from
21 law firms?

22 A He may have said handwritten list of

1 attorneys, but I was trying to be pretty albeit
2 cryptic in the way I was writing.

3 Q I'm just trying to confirm that, which I
4 think I know, which is he didn't give a list and you
5 didn't in shorthand reduce that to people from law
6 firm. To the best of your recollection, he said
7 attorneys or people from law firm, something like
8 that?

9 A That's correct.

10 Q Now have we now covered your notes
11 regarding the contents of the briefcase?

12 A Yes.

13 Q Where was the briefcase physically before
14 Mr. Nussbaum began to review its contents?

15 A It was behind the desk against the wall.

16 Q You're indicating?

17 A To his right.

18 Q On the floor?

19 A Yes.

20 Q When he reviewed its contents, did he
21 personally pick it up?

22 A Yes.

1 Q Did he place it on the desk in front of
2 himself?

3 A My recollection is, he placed it on the
4 desk and he picked the files up because it was
5 stuffed. I mean, it was overflowing almost and he
6 picked them up and put them in a pile. He may not
7 have done it all at once. And then he put the
8 briefcase back.

9 Q Did you observe, after he removed the
10 documents, whether he looked in the briefcase to see
11 whether there was anything else in there?

12 (Pause.)

13 A I'm just trying to recall. I read a
14 recent newspaper article where Markland said he asked
15 him what was in the briefcase, and I have a vague
16 recollection that somebody asked that question. And
17 he said something like, I have all the files and the
18 documents for the briefcase, something like that
19 transpired. I don't remember the exact --

20 Q Do you have an independent recollection of
21 that? Or is what Mr. Markland said refreshing an
22 independent recollection you had?

1 A When I read that, it struck me and it
2 refreshed my recollection. I had a vague
3 recollection. I don't remember exactly what it was,
4 but it seemed consistent.

5 Q I realize it's vague, and I won't try too
6 hard, but generally that recollection was that Mr.
7 Nussbaum stated what?

8 A The gist of it was that I've got all the
9 files and documents from the briefcase.

10 Q Creating in your mind the impression there
11 was nothing else in the briefcase?

12 A At that time? I'm sorry, I lost the
13 question.

14 Q By using the phrase, files and documents,
15 did that imply to you that there were things in that
16 briefcase that were not files and documents, or did
17 you have the impression that it was empty?

18 MR. BEN-VENISTE: I have to object now.
19 It gets pretty confusing since you're ascribing to
20 Mr. Spafford the words "files and documents" as those
21 being used by Mr. Nussbaum.

22 I didn't think he did that.

1 MR. JOHNSON: Maybe not.

2 BY MR. JOHNSON:

3 Q Do you remember what Mr. Nussbaum said?

4 A No, I don't recall the exact thing that he
5 said. I'm just relaying my impression, the gist of
6 what he said.

7 Q Now, as you observed this, based upon your
8 impression of what he said, did you have the
9 impression there was anything else in the briefcase?

10 A I didn't have an impression one way or the
11 other on that.

12 Q Now, from where you were sitting, Mr.
13 Spafford, could you see in the briefcase?

14 A No.

15 Q Could anyone --
16 Strike that.

17 Did anyone else, other than Mr. Nussbaum,
18 look into the briefcase at that time?

19 A Not that I recall at that time.

20 Q I understand.

21 What did Mr. Nussbaum physically do with
22 the briefcase?

1 A He put it back where it was, behind the
2 desk.

3 Q Was there any further discussion, other
4 than what we have already discussed in your notes,
5 relating to the briefcase at that time of this
6 review?

7 A No.

8 Q Now still continuing with your handwritten
9 notes, there's an indication at the bottom of the
10 same page that has the description of the briefcase
11 contents on it, that says M and then look, and I
12 can't read the rest of that annotation.

13 Perhaps you could read that to me.

14 A Look through to see if non-office
15 telephone calls. And it's relating to phone
16 messages. There were pink slip phone messages and
17 Mr. Nussbaum read off the dates. They were in the
18 drawer to his desk, so that went into the pile of
19 documents that were of interest to the investigators.

20 Q Over on the next page is an indication of
21 telephone call slips from February with an arrow on
22 either side.

1 What does that indicate to you?

2 A This is, again, those are these pink slips
3 from telephone messages from February.

4 Mr. Margolis said he was interested in
5 those, and to the right it says, please review. He's
6 asking Mr. Nussbaum to review those again for the
7 unusual items that he had described; threats,
8 evidence of depression, those types of things.

9 You see the stars, just so it's clear, not
10 just the arrows, where there are stars, there are
11 things they also said that were of interest. I don't
12 know why I changed my method. I guess I needed to
13 spice things up a little.

14 Q At any point in time, did anyone express
15 the opinion that Mr. Nussbaum was taking too
16 aggressive a view of privilege in this meeting?

17 A Not that I heard.

18 Q Other than the one point which you
19 discussed earlier, where Mr. Margolis says any
20 privilege would have been abandoned because he threw
21 out the trash, do you remember any point where Mr.
22 Nussbaum's claim or assertion or opinion of privilege

1 was challenged by anyone in the meeting?

2 A No. Other than what I testified generally
3 about the discussion up front with Mr. Margolis.

4 Q Also, on the same page that we've just
5 been referring, there's an indication it says "Foster
6 notebook" it looks like "phone directory of people
7 from Arkansas," I assume.

8 Tell me if I've misread that?

9 A No, that's correct.

10 Q What does the indication on the left hand
11 margin say?

12 A That's Mr. Margolis' question or one of
13 the other investigators. I don't have the M there so
14 it could have been someone else, anyone in D.C.,
15 District of Columbia, any doctors.

16 Q Did Mr. Nussbaum or anybody else answer
17 that question?

18 A The Foster notebook was a black notebook
19 of telephone numbers and addresses that was put in
20 the personal document file. You'll see that's in the
21 inventory of documents we've removed. And that was
22 reviewed by the Park Police the next week in our

76

1 office.

2 Q Over on the next page, it says two file
3 drawers on R, I take it to mean right.

4 A Except that I think that should be left
5 because if you look at the prior page, I say left
6 drawers beginning there, and so this is the second
7 file drawer on the left.

8 Q Orient us a little bit. As you're looking
9 at Mr. Foster's desk, from not the side that Mr.
10 Nussbaum was standing on, but from the other side of
11 the desk, are these filing drawers on the left or the
12 right?

13 A They're on Mr. Nussbaum's left as he's
14 sitting behind the desk, so if you're in front of the
15 desk, they're on the right.

16 Q It says "contains work files."
17 Do you see that?

18 A Yes.

19 Q To the best of your recollection, is that
20 the only description that Mr. Nussbaum gave of the
21 contents?

22 A Yes, it was a general description and Mr.

1 Margolis asked him, if you look at the right, it says
2 please look at those for the unusual items that he
3 identified earlier.

4 Q Did Mr. Nussbaum do that?

5 A I don't know. He didn't do it at that
6 time.

7 Q Let me just stop here.

8 Mr. Margolis was indicating to Mr.

9 Nussbaum that he would like Mr. Nussbaum to look at
10 the contents of that two-file drawer. is that
11 correct?

12 A Yes.

13 Q And you're clear that Mr. Nussbaum did not
14 review those documents at that time?

15 A During that meeting? No, he did not,
16 other than -- well, let me back up, just so there's
17 no misunderstanding. I mean he went through the file
18 drawer and said, he's flipping the green folders,
19 looking through it. And he made a general statement,
20 these appear all, or these all relate to General
21 Counsel Office issues.

22 MR. HAMILTON: Kip. I have the impression

1 from your question that you might be leaving the
2 implication that Margolis asked Mr. Nussbaum to
3 review the files at that time.

4 I don't think that's what Mr. Spafford
5 said.

6 THE WITNESS: That's correct.

7 Again, as I said earlier, the idea was
8 certain documents were identified as of interest in
9 this file drawer, as well as, for example, you'll see
10 later the computer. Mr. Margolis asked Mr. Nussbaum
11 to review those. It wasn't necessarily going to be
12 at that time. In fact, the clear implication was he
13 would do it later, and they would talk about it.

14 Mr. Nussbaum would identify for him any
15 unusual items that he had identified earlier.

16 BY MR. JOHNSON:

17 Q Thank you, that's helpful.

18 Did Mr. Nussbaum remove the contents of
19 that drawer and place them in the pile of interest
20 and things, or did he leave them in the drawer?

21 A He left them in the drawer.

22 Q Were either Mr. Nussbaum, Mr. Sloan or Mr.

1 Neuwirth making notes of Mr. Margolis' requests?

2 A Mr. Nussbaum was not. I don't know, I was
3 busy concentrating on taking my own notes. I don't
4 recall if anyone else was.

5 Q You can't say one way or the other with
6 respect to people other than Mr. Nussbaum?

7 A That's correct.

8 Q I think the next entry relates to the
9 trash, which you've already described to us. Is that
10 right?

11 A That's right.

12 Q The next entry says, credenza on right.
13 Orient me again, if you would. If you're facing Mr.
14 Foster's desk, not behind it but looking at it from
15 the front?

16 A It would be on the left.

17 Q On the left, okay.

18 A It was actually the credenza right next to
19 me where I was standing.

20 (Pause.)

21 At some point, I think it was about this
22 time was when of the FBI agents stood up and kind of

1 looked like he was trying to look at the documents,
2 and Mr. Sloan asked him if he was trying to look at
3 the documents, kind of confronted him, and Mr.
4 Nussbaum actually kind of rebuked him and said, look,
5 we're here to cooperate. We don't need any of that.

6 Q Rebuked Mr. Sloan?

7 A Yes. And that diffused it and they went
8 on. That's not reflected in my notes.

9 Q What makes you think that it was about at
10 this time of the review that that occurred?

11 A I remember it was about halfway through.
12 I'm just assuming on my notes that we're about
13 halfway through, maybe a little more.

14 Q As precisely as you can, what did Mr.
15 Sloan say to the FBI agent?

16 A He said something like, are you trying to
17 look at these documents.

18 Q Was he kidding or was he serious?

19 A No, he was very serious.

20 Q Did the tone of Mr. Sloan's comment strike
21 you as out of place or inappropriate?

22 A It struck me as he was maybe trying a

1 little too assiduously to do his job.

2 And Mr. Nussbaum, I thought correctly
3 said, look, that's not the purpose of why we're here.
4 We don't need that. We're going to cooperate and
5 we're going to go through this.

6 And he struck a professional tone, which I
7 thought was appropriate.

8 Q What, if anything, did the FBI agent say
9 in response to Mr. Sloan's question?

10 (Pause.)

11 A I don't recall him making a statement. I
12 recall him looking a little perturbed, let's say, at
13 the statement, but I don't recall him saying
14 anything, because, as I remember it, Mr. Nussbaum
15 jumped in pretty quickly and said, look, let's get
16 this job done, let's do it.

17 Q I'll try and go quickly through the
18 remaining notes here.

19 At the bottom of this page, it says some
20 personal files, tax returns, frequent flier
21 something, monthly expenses --

22 A Moving expenses, lease.

1 Q Is this an indication that those were on
2 the credenza on the left?

3 A Yes, they were in files in the credenza on
4 the left where there was a computer on top.

5 Q What does it say in the left hand margin?

6 A Mr. Margolis says separate that as part of
7 the personal stuff, and he says the only question is
8 battle with counsel. Don't give it to counsel.

9 And Mr. Nussbaum said, well, counsel's
10 standing right here. Why don't you talk to him.

11 This is where my notes, we then had a
12 little conversation about he basically, and this is
13 reflected in my memo to a certain extent, and it was
14 picked up later.

15 Mr. Margolis said, look, I have
16 jurisdiction over this. I want to look at these
17 documents and I think it behooves you to cooperate.

18 And I said, well, I certainly agree that
19 we want to cooperate. Why don't we talk about this
20 when we're done with this meeting.

21 We then had a conversation later which I
22 don't know if you want me to get into now, but

1 talking about the personal documents, how I was going
2 to take them back, and how I would review them and
3 get back to him, and basically procedures for
4 handling those, and talking to him later about how
5 they would review them.

6 Q This indicates that Mr. Margolis asked Mr.
7 Nussbaum not to give counsel, I take it meaning you,
8 those personal documents. Is that correct?

9 A That's correct.

10 Then Mr. Nussbaum said, well, why don't
11 you ask the counsel, he's standing right there.

12 That's when we had a conversation and I
13 stopped taking notes because I was talking.

14 Q And at some point, Mr. Margolis indicated
15 that the Grand Jury might serve a subpoena for these
16 documents.

17 A I think if you look at my typewritten
18 memo, you will see the conversation that we had, both
19 then and then later, yes, bottom of three going over
20 to four. In discussions with Mr. Margolis, he made
21 it clear that the Government would get a Grand Jury
22 subpoena for the materials if necessary.

1 And then in a footnote, he talks about the
2 legal grounds that he thought he had for the
3 subpoena, but suggested that cooperation might be
4 preferable.

5 I responded that I didn't see any
6 impediments to cooperation, but I noted that without
7 reviewing the documents, it was difficult to make
8 that judgment at this time.

9 I also stated that due to the stressful
10 and trying circumstances, we had not had an
11 opportunity to discuss the issue with our clients. I
12 stated that our goal was to cooperate with them to
13 the greatest extent possible while, at the same time,
14 protecting the legitimate privacy interests of the
15 family.

16 That's the general tenor of the
17 conversation.

18 Q Focusing on that part of the conversation
19 where you discussed the Grand Jury subpoena, did Mr.
20 Margolis say or indicate to you, hey, if you don't
21 give me these documents, I'm simply going to subpoena
22 them?

1 A Well, I'm not sure I understand your
2 question. But let me answer it this way.

3 He made it clear that if necessary, he
4 could get a Grand Jury subpoena. I made it clear
5 that I didn't think that was necessary, that we would
6 cooperate, and that we could talk through this but
7 that I had some logistical issues I had to work out.

8 a) I had to talk to my client.

9 b) I didn't know what the documents were
10 so I didn't know what the issues were.

11 And the way we talked it through and
12 agreed was that I would take the documents back to
13 our office, I would look through them, and I would
14 look for any unusual items along the lines that he
15 talked about, and I would call him the next day to
16 alert him to any unusual items and then we would
17 discuss arrangements for how the investigators could
18 review these documents once I had a handle on some of
19 those outstanding issues.

20 Q At any other time during the course of the
21 review of the documents on the 22nd, did Mr. Margolis
22 discuss the possibility of issuing a Grand Jury

1 subpoena to review documents?

2 MR. HAMILTON: To whom?

3 MR. JOHNSON: To anyone else?

4 THE WITNESS: I don't think so, no.

5 BY MR. JOHNSON:

6 Q That was the only time you recall any
7 conversation about a subpoena with respect to Mr.
8 Foster's documents?

9 A Well, I was trying to recall up front what
10 he said. I mean, he made it clear that he thought he
11 had the authority to investigate this and he was
12 empowered up front with his comments, as I testified
13 earlier, by Mr. Nussbaum. But I don't recall him
14 using the word subpoena at that time.

15 Q It also indicates credenza on left with
16 computer.

17 Was there any discussion about what, if
18 anything, may be on the hard or soft disk in Mr.
19 Foster's computer?

20 A Yes. If you look two pages later in my
21 notes, you'll see at the top, the second-to-the-last
22 page. Margolis: what about the computer.

1 There was some discussion about that, but
2 the gist of it was that he asked Mr. Nussbaum to
3 review that, not at that time, but as he was going
4 forward. You know, along with the other documents to
5 review it for threats and other unusual items.

6 Q And did Mr. Nussbaum, in response, say
7 that he would undertake such a review?

8 A Yes.

9 Well, let me be specific there. I don't
10 recall him saying specifically yes. It was my
11 impression that he agreed.

12 Q As we get to the last page of your notes,
13 there was an indication that there was some
14 discussion about the burn bag.

15 Do you see that?

16 A Yes.

17 Q What do you recall about that discussion?

18 A One of the bags was identified by Mr.
19 Nussbaum as the contents from the burn bag, which he
20 said was picked up everyday and he then reviewed
21 those and went through that, and generally said
22 handwritten notes relating to General Counsel's

1 issues, and all documents were work-related.

2 Q Did he take those documents out of the
3 burn bag or out of some other thing?

4 A It was a plastic bag. He took them out of
5 a plastic bag and went through them.

6 Q And you're clear it's a plastic bag and
7 not a paper bag?

8 A Yes.

9 Q Did he say how, if at all, the contents of
10 the burn bag had been retrieved or whether they had
11 been retrieved?

12 A No, he didn't.

13 Q Did anyone ask?

14 A No.

15 Q Perhaps you could read the last entry on
16 this next-to-last page of your handwritten notes
17 where it says, FBI.

18 A Yes. I think you'll see this is also
19 reflected on page four of my memo. But it says FBI,
20 that means one of the FBI agents made the statement,
21 most people leave notes.

22 Then, either Margolis or somebody said,

1 there was one gun that was put together from two.
2 M.E., medical examiner, gunshot wound close distance
3 autopsy report two weeks.

4 I think you'll see on page four, there's a
5 little more fuller description of what they said.

6 When I went back that night and did this
7 memo, the paragraph that says, in Mr. Foster's
8 office.

9 Q Are you referring to page four, the first
10 full paragraph?

11 A Yes.

12 Q Okay.

13 Perhaps you could read to me the entry on
14 the top of the last page.

15 A This is a statement from Mr. Margolis
16 saying that he wanted to talk to me about the
17 personal effects. This is the reference that I
18 talked about earlier about it in the footnote about
19 it being a crime on Federal property, and him
20 thinking he had jurisdiction.

21 This came at the end of the meeting.

22 Basically, he said, I want to talk to you downstairs,

1 and then I went down after I collected the stuff, and
2 met with him, and Mr. Markland and the other
3 investigators, along the lines that we talked about
4 earlier.

5 We discussed what he thought was his
6 authority and I discussed my logistical issues, and
7 we discussed the manner in which we were going to
8 proceed.

9 Q Before we leave the office, your notes, I
10 take it, reflect, to the best of your recollection,
11 the things that Mr. Nussbaum said and others said
12 during the review of the contents of the office. Is
13 that correct? Just the notes we've been going
14 through.

15 A That's correct.

16 I mean, at the end, I put my notes into
17 the briefcase so I could assemble the personal
18 documents and put them into a box.

19 Q I was going to ask. Actually, you're a
20 little ahead of me, but we're going the same place.

21 I was going to ask you what happened next,
22 after the documents had been reviewed in the manner

1 that we've been describing.

2 A Basically, Mr. Margolis said, I'll meet
3 you downstairs. I want to talk about this. And the
4 investigators left. Somebody got a box. I'm not
5 sure whether --

6 Q When you say the investigators left, let
7 me focus a minute on who is now gone and who is now
8 there.

9 Mr. Margolis and Mr. Adams are gone?

10 A Yes.

11 Q The FBI agents?

12 A Yes.

13 Q The Secret Service agents?

14 A Yes.

15 Q The Park Police?

16 A Yes.

17 Q All of those people are gone?

18 A Yes.

19 Q Except Mr. Margolis has not left the White
20 House premises because you know he's waiting for you
21 downstairs, is that correct?

22 A Yes. In fact, I did meet him five or ten

1 minutes later.

2 Q When Mr. Margolis said I'll meet you
3 downstairs, was that in the presence of others in the
4 room?

5 A Yes.

6 Q Was it said out loud so that everybody
7 could hear?

8 A Yes.

9 Q After they left, who was remaining in the
10 White House Counsel's Office?

11 A Somebody got a box, and basically I was
12 assembling those, and it was Mr. Nussbaum, Mr. Sloan,
13 and myself were the only ones left in Mr. Foster's
14 office.

15 As I was putting the personal documents
16 into the box, Mr. Sloan was helping me.

17 Q The personal documents were in one of the
18 piles on Mr. Foster's desk, is that correct?

19 A That's correct.

20 Q What do you recall happened?

21 A I was having a discussion with Mr.
22 Nussbaum about how to proceed. It was something

1 along the lines that I was going to take these back
2 and would look at them to make sure that they were
3 all personal documents and not any general counsel
4 issues.

5 Q At this point in time, had you placed your
6 notes in your briefcase?

7 A Yes.

8 Q You were no longer taking notes?

9 A Yes, that's correct.

10 Q Go ahead.

11 A And there was also a discussion that Mr.
12 Nussbaum said something like, when I look through
13 these other files, if I find anything personal, we
14 will send that over to you. Like there was a whole
15 bookshelf of books and things.

16 So I didn't see the need at that time to
17 bring those with me. At some point during that
18 discussion, Mr. Sloan came up with the briefcase and
19 said something to the effect that there were scraps
20 in the bottom of the briefcase.

21 Q Said to whom?

22 A To Mr. Nussbaum.

1 Q Did Mr. Sloan physically pick up the
2 briefcase?

3 A I wasn't focusing on him, and the first
4 time I noticed him, because I was talking to Mr.
5 Nussbaum, and kind of gathering these things, he had
6 the briefcase in his hands.

7 Q So the assumption is he picked it up?

8 A Yes.

9 Q And, I'm sorry, I wasn't focusing enough.
10 What were Mr. Sloan's exact words as best you can
11 recall?

12 A I don't recall his exact words but the
13 gist of it was there appear to be scraps in the
14 bottom of the briefcase. He kind of had it like this
15 and he was looking at it.

16 Q Could you see him physically look right in
17 it?

18 A Yes.

19 Q Did he say anything else?

20 A No.

21 Mr. Nussbaum responded, I remember he was
22 sitting down. He looked exhausted, but he said

1 something like, we're going to have to go through all
2 of this later. Don't worry about it.

3 And then he said to me, when we -- if we
4 find personal documents in our review, we will send
5 that over to you later.

6 And then we had a discussion I think about
7 he was going to Arkansas the next day for the
8 funeral. And just kind of general niceties, closing
9 up, and I took the box and left.

10 Q Mr. Nussbaum said, in response to Mr.
11 Sloan's statement that there were scraps of paper in
12 the bottom of the briefcase, words to the effect of,
13 we're going to have to look at all of this later;
14 don't worry about it.

15 Is that correct?

16 A Yes.

17 Q To the best of your recollection, is that
18 as close to your exact words as you can get today, to
19 his exact words as you can get today?

20 A I don't recall his exact words, but that's
21 the best of my recollection.

22 Q I realize it's very difficult. I'll

1 apologize in advance for dwelling on it, but I will.
2 "Don't worry about it," that expression, is it clear
3 in your mind?

4 A That's more an impression of -- whether or
5 not he said that, I'm not sure, but that's more my
6 impression was look, we've got to look through all of
7 this later. Let's do it all at once, let's do it in
8 an organized fashion. That was my impression, my
9 words, all right.

10 So he was saying, you know, we'll look at
11 that later, basically, put that in the pile.

12 Q Did Mr. Sloan put it in any pile?

13 A I didn't focus on what he did with the
14 briefcase because I was having a conversation with
15 Mr. Nussbaum and focusing on, you know, the personal
16 items in the box.

17 MR. BEN-VENISTE: I'm sorry to interrupt
18 but I'm confused now.

19 Are you saying that Mr. Nussbaum said, put
20 it in the pile, or was this your sort of editorial
21 comment in your own mind?

22 THE WITNESS: That's more my editorial

1 comment in my own mind. It was an off-the-cuff
2 comment by Mr. Sloan. Neither I nor Mr. Nussbaum
3 gave it much significance. It was just kind of,
4 there are scraps.

5 BY MR. JOHNSON:

6 Q You don't recall seeing what Mr. Sloan did
7 with the briefcase after that comment?

8 A No.

9 Q Did Mr. Sloan say anything further?

10 A I think we said some salutations or
11 whatever, you know.

12 Q Other than sort of ordinary goodbyes, is
13 the last thing that happened this exchange between
14 Mr. Sloan and Mr. Nussbaum that you've just
15 described?

16 A Yes.

17 Q When you were observing Mr. Nussbaum who
18 was sitting down, he seemed fatigued to you, is that
19 correct?

20 A Yes.

21 Q When Mr. Sloan said words to the effect of
22 there appear to be scraps in the bottom of the

1 briefcase, did Mr. Nussbaum evidence any surprise?

2 A No.

3 Q He did not say, for example, oh, gosh, or
4 how did I miss that, or any words like that that you
5 recall?

6 A No.

7 Q What was Mr. Sloan's tone, if you know,
8 when he said to Mr. Nussbaum, there appear to be
9 scraps in the bottom of the briefcase?

10 A Well, as I said earlier, it was an off-
11 the-cuff kind of remark. I didn't attach any
12 significance to it. There was none attached to it by
13 Mr. Sloan. It was kind of like there it is.

14 Q Well, --

15 A Matter of fact, if you want.

16 Q Was it your impression that Mr. Sloan was
17 pointing out that there's at least some paper that we
18 didn't go through here? Was that the sense that you
19 had of it?

20 A Yes. But like I said earlier, there was a
21 lot of paper that wasn't gone through, and that Mr.
22 Nussbaum had said he would review. That was his

1 reaction.

2 Q Now were there other documents, other
3 papers in the office that Mr. Nussbaum didn't go
4 through and did not describe?

5 MR. BEN-VENISTE: Other than what?

6 MR. JOHNSON: Other than the scraps of
7 paper in the bottom.

8 MR. HAMILTON: Why don't you rephrase the
9 question.

10 BY MR. JOHNSON:

11 Q Did Mr. Nussbaum go through or describe
12 the scraps of paper in the bottom of the briefcase in
13 your presence while you were there?

14 A No.

15 Q Were there other documents in the office,
16 other than scraps of paper, that you just said he
17 didn't go through and didn't describe, were there
18 other documents in Mr. Foster's office that Mr.
19 Nussbaum didn't go through or didn't describe?

20 MR. BEN-VENISTE: I guess the problem with
21 the question is it's referring to the scraps of paper
22 as documents.

100

1 MR. JOHNSON: Scraps of paper. Were there
2 other, can I say pieces of paper?

3 BY MR. JOHNSON:

4 Q Were there other papers or documents.

5 MR. BEN-VENISTE: Were there any papers.

6 THE WITNESS: As I testified to earlier,
7 and as my notes reflect, in a couple of the file
8 drawers, Mr. Nussbaum just generally described some
9 of the files and did not review the documents that
10 were in all the files. He said these are all work-
11 related files.

12 And then, you know, the computer, he
13 didn't review the computer. The agreement with Mr.
14 Margolis was that he would review those things and
15 get back to Mr. Margolis about anything that was
16 unusual or what Mr. Margolis had described to him as
17 relevant to their inquiry.

18 BY MR. JOHNSON:

19 Q Obviously, he didn't describe every
20 document in every file. That's what you're telling
21 me?

22 A That's correct.

1 Q But are there any files that he skipped,
2 where he made no indication of the content of the
3 file, to the best of your knowledge?

4 A I'm not sure I understand the question.

5 Q I'm not trying to be coy or deceitful. We
6 have scraps of paper which we come later in time to
7 know were not just scraps of paper, they're
8 handwritten notes. At least that's what everyone
9 believes.

10 MR. HAMILTON: Just a second. Mr.
11 Spafford is not testifying that scraps were what
12 turned out to be a handwritten note.

13 MR. KRAVITZ: Or that he even saw them.

14 THE WITNESS: I did not see them.

15 MR. JOHNSON: Do you want to say
16 something?

17 (No response.)

18 MR. HAMILTON: No. But Mr. Kravitz just
19 made a very useful point. Maybe you want to ask Mr.
20 Spafford to respond to that.

21 BY MR. JOHNSON:

22 Q You didn't see the scraps of paper in the

1 bottom of the briefcase?

2 A No, I didn't.

3 Let me answer it this way, all right.

4 There were some files that he looked at,
5 for example, one drawer of the credenza, he looked
6 through. You could see him going through it, and he
7 said, look, these are all General Counsel White House
8 issues.

9 Q Mr. Nussbaum, in that example that you've
10 just given me, made some effort to ascertain what was
11 in the documents. I realize he didn't look at every
12 one, but he made an effort to see what the content
13 was.

14 A I guess that's a fair characterization,
15 yes.

16 Q Other than these scraps or pieces of paper
17 which Mr. Sloan referred to and you didn't see, and
18 you don't know what they are, are there any other
19 pieces of paper or groups of documents for which he
20 made no effort to ascertain the content?

21 MR. BEN-VENISTE: This is just argument at
22 this point, Kip, given his recollection of what the

1 process was.

2 MR. JOHNSON: Okay.

3 BY MR. JOHNSON:

4 Q You can answer that.

5 A I don't know. I suppose there could have
6 been things in the file. It's difficult to answer
7 that.

8 Q Based upon everything you observed in the
9 meeting, it's fair to say, is it not, that there was
10 no discussion of what those scraps of paper that Mr.
11 Sloan referred to, which you didn't see, were or
12 contained?

13 A That's correct.

14 Q As you sit here today, excluding the
15 computer, which I'm going to ask you about, do you
16 have a recollection of there being any other document
17 or groups of documents in Mr. Foster's office about
18 which there was no discussion about their contents?

19 A Well, the books on the bookshelf were not
20 discussed, and were not reviewed at that time.

21 Mr. Hamilton referred to some additions we
22 want to make on that index. That general index did

104

1 not refer to two videotapes that were sent over on
2 the 27th, as a part of the second box. Neither one
3 of those videotapes were reviewed, or an attempt was
4 made at that time.

5 Q Were they identified to the group as
6 videotapes?

7 A No. There was a reference made to the
8 bookshelf where there were books and other things.

9 Q That's where the videotapes were?

10 A That's my understanding.

11 Q Other than the books and videotapes, are
12 you aware of there being any other documents, pieces
13 of paper, where the contents of which was not
14 attempted to be ascertained?

15 A I think I've already answered that.

16 Q I'm just trying to wrap it up.

17 As you sit here today, other than what
18 you've said, you can't think of anything else?

19 A No.

20 Q What's the next thing that you recall
21 happening after this exchange between Mr. Sloan and
22 Mr. Nussbaum?

1 A Well, as I said, we wrapped up the meeting
2 and I went downstairs and met with Mr. Margolis and
3 Mr. Markland and the other investigators. They were
4 in the lobby of, you know, what is that side entrance
5 that goes to the Executive Office Building, that
6 door? They were right there at the bottom of the
7 stairs.

8 Q The basement lobby.

9 A I don't know what it's called.

10 Anyway, we met and we walked outside and
11 talked along the lines that we talked about earlier,
12 and about how we would proceed. And then I left with
13 the box.

14 MR. HAMILTON: May I make a suggestion,
15 because I think there may be some confusion. I think
16 you should ask the question to ascertain whether they
17 went out at the basement lobby or whether they went
18 out through the main lobby of the West Wing.

19 MR. JOHNSON: Okay.

20 BY MR. JOHNSON:

21 Q Can you answer Mr. Hamilton's question?
22 It's a good question.

1 A I'm not sure I understand the distinction,
2 but there's a door that is directly across from the
3 Executive Office Building. They were just inside
4 that door. Then we walked outside that door and
5 stood outside, there was a canopy, and had a
6 discussion under that canopy.

7 Q That door you were walking out, does it
8 lead to West Executive Avenue, and are there cars
9 parked along there? Are we visualizing the same
10 entrance?

11 A It goes across the street. There are cars
12 parked in the Executive Office Building straight in
13 front.

14 Q How much time would you say elapsed
15 between when the investigators left Mr. Foster's
16 office and you next met with Mr. Margolis?

17 A Five, ten minutes.

18 Q Were you physically carrying the box of
19 personal documents with you at that time?

20 A Yes.

21 Q What do you recall about your conversation
22 with Mr. Margolis?

1 A Well, generally along the lines that we
2 discussed earlier and as reflected in my memo. Mr.
3 Margolis made it clear that he felt he had
4 jurisdiction, that he could get a subpoena, but that
5 he wanted to cooperate. And I agreed, but I said,
6 look, I have some logistical issues I've got to deal
7 with.

8 1) I've got to know what's in the
9 documents, which may raise certain issues that we'll
10 have to deal with.

11 2) I need to talk to my client.

12 So what we agreed upon is that I would
13 take the documents back to my office. I would look
14 through those, try to identify those issues, and also
15 look through them in more detail for any unusual
16 items along the lines that he had talked about.

17 I then took that back to my office and I
18 did two things. One, I did a memo of the meeting,
19 which is reflected here in the July 23 memo, and I
20 made an inventory of the contents of the box.

21 I then called Mr. Margolis the next day
22 and we talked.

1 Q When you left the White House at that
2 time, did you and Mr. Margolis and the investigators
3 leave together, or did you leave separately?

4 A I left by myself, and walked to
5 Pennsylvania Avenue and got a cab.

6 Q Did you go directly back to your law
7 firm's offices at that time?

8 A Yes.

9 Q Approximately what time of day was that?
10 (Pause.)

11 A It was around like 3:00, 3:30.

12 Q So what time do you estimate that you
13 arrived back at your office, or is that what you just
14 meant to indicate?

15 A That's what I just meant?

16 Q How long generally does it take to get
17 from the White House to your office?

18 A I don't recall any traffic problems, so it
19 was probably about ten, 15 minutes.

20 Q And when you got back to your office, what
21 did you do next?

22 A Actually I had a couple of other client

1 fires I had to put out, and probably about 5:00
2 o'clock, I sat down and did my memo and did a
3 detailed inventory that night.

4 Q And the memo you describe is the memo that
5 you've been kind enough to produce to us, to James
6 Hamilton from Michael Spafford, dated July 23rd, 1993
7 Re Vince Foster. Am I referring to the right memo?

8 A Yes.

9 Q Now it's dated July 23rd, but you
10 testified that you composed it initially about 5:00
11 o'clock in the evening of the 22nd, is that correct?

12 A Yes.

13 Then on the 23rd, I tried to clean up some
14 typos. That's why it's dated the 23rd. I missed a
15 few. Don't hold it against me.

16 Q Now, Mr. Spafford, the exchange that
17 you've described between Mr. Sloan and Mr. Nussbaum
18 relating to scraps of paper that Mr. Sloan observed
19 in the bottom of the briefcase is not reflected in
20 your handwritten notes that you took
21 contemporaneously with the inventory.

22 Am I right about that?

1 A That's correct.

2 Q Why is that?

3 A Because at that point in time, I'd put my
4 notes in my briefcase and was no longer taking notes.

5 Q I'm also --

6 A I think also, you've got to remember that
7 it was an off-the-cuff comment that I really didn't
8 attach much significance to at the time, and that's
9 why it's not reflected in my memorandum or my notes.

10 Q You also did not reflect that comment in
11 your memorandum?

12 A That's correct.

13 Q Putting aside for the moment the identity
14 of the person, did you describe the exchange between
15 Mr. Sloan and Mr. Foster to anyone on the afternoon
16 of the 22nd?

17 MR. HAMILTON: You don't mean Mr. Sloan
18 and Mr. Foster.

19 MR. JOHNSON: Thank you.

20 BY MR. JOHNSON:

21 Q Mr. Sloan and Mr. Nussbaum?

22 A No.

1 Q Putting aside for a moment, who do you
2 recall ever describing that exchange that you
3 observed between Mr. Sloan and Mr. Nussbaum to
4 anyone?

5 MR. HAMILTON: Putting aside?

6 MR. JOHNSON: Whom. I just want to get a
7 date.

8 MR. BEN-VENISTE: Prior to today, is that
9 your question?

10 MR. HAMILTON: Are you talking about other
11 than privileged conversations?

12 MR. JOHNSON: That's why I excluded whom,
13 and I wanted to just fix a date, if I could.

14 MR. HAMILTON: Well, I think that that is
15 an improper question. I don't think you can ask
16 about privileged conversations and try to fix a date
17 on them. And he is happy to testify about any non-
18 privileged conversations that he's had.

19 MR. JOHNSON: Why don't we go off the
20 record for a second.

21 (Discussion off the record.)

22 MR. JOHNSON: Mr. Hamilton, if I state

1 this incorrectly, I'll trust that you will help me
2 figure it out. We're dealing with extraordinarily
3 sensitive issues of attorney-client privilege.

4 In an off-the-record conversation with Mr.
5 Spafford, we've agreed that I would ask you when, and
6 so my question is:

7 BY MR. JOHNSON:

8 Q When did you first make any connection
9 between the exchange that you've described between
10 Mr. Sloan and Mr. Nussbaum in Mr. Foster's office on
11 the afternoon of the 22nd, and the handwritten note
12 of Mr. Foster's that was discovered and made public
13 later in time?

14 MR. HAMILTON: We have agreed, by
15 answering that question, there's no waiver of any
16 type of privilege.

17 Is that right?

18 MR. JOHNSON: We've agreed to that.

19 THE WITNESS: Does Mr. Ben-Veniste agree
20 to that?

21 (Laughter.)

22 THE WITNESS: He said yes.

1 MR. JOHNSON: Or a colloquialism for yes.

2 THE WITNESS: When I learned of the
3 existence of the torn note the following week, I
4 connected the two together, which is the reason why
5 it stands out so prominently in my mind.

6 BY MR. JOHNSON:

7 Q Do you have any specific recollection of
8 the date?

9 A No.

10 Q Did you make any notes or annotations of
11 that connection at that time?

12 A No.

13 Q Prior to that time, which is sometime in
14 the following week, I take it, after the discovery of
15 the note became public, have you discussed the
16 exchange between Mr. Sloan and Mr. Nussbaum in Mr.
17 Foster's office on the afternoon of the 22nd with
18 anyone?

19 A No.

20 Q After you made the connection some time in
21 the following week, did you discuss the conversation
22 between Mr. Sloan and Mr. Nussbaum with anyone with

114

1 respect to whom there is no claim of attorney-client
2 privilege?

3 MR. HAMILTON: Or work product privilege
4 or any privilege.

5 MR. JOHNSON: Agreed.

6 THE WITNESS: The first time I discussed
7 it is when about two or three weeks ago, a
8 representative from Mr. Starr's office, Brent
9 Cavanaugh, interviewed me and asked questions
10 relating to what happened.

11 MR. JOHNSON: Why don't we take -- I
12 apologize for the length of this -- a five-minute
13 break.

14 (Discussion off the record.)

15 BY MR. JOHNSON:

16 Q Mr. Spafford, you've testified that prior
17 to your making the connection between Mr. Sloan's and
18 Mr. Nussbaum's exchange and the note, you had not
19 discussed with anyone, that is to say, you hadn't
20 discussed what you heard Mr. Sloan say to Mr.
21 Nussbaum after you made that connection, which you
22 placed at some time in the week following July 22nd,

1 1993, when did you first discuss what you observed
2 Mr. Sloan saying to Mr. Nussbaum with anyone?

3 MR. HAMILTON: And we agreed that in
4 responding to that question, there's no waiver of any
5 type of privilege.

6 MR. JOHNSON: We do.

7 THE WITNESS: That same week.

8 BY MR. JOHNSON:

9 Q Because I asked the question so badly, it
10 really didn't focus in time.

11 Did you discuss it with anyone
12 immediately?

13 A It was the same day that I made the
14 connection. I don't remember the exact day. It was
15 some time that week when the existence of the note
16 became known.

17 Q You made the connection some time during
18 that week. You can't recall exactly what day. Is
19 that correct?

20 A That's correct.

21 Q But on whatever day it was, you discussed
22 that connection with someone on that same day?

1 A That's correct.

2 Q Now, I think you also testified that the
3 first non-privileged discussion of that conversation
4 between Mr. Sloan and Mr. Cavanaugh was in connection
5 --

6 MR. HAMILTON: Mr. Sloan and Mr. Nussbaum.

7 MR. JOHNSON: Mr. Sloan and Mr. Nussbaum
8 was with Mr. Cavanaugh in connection with the
9 Independent Counsel's investigation, is that correct?

10 THE WITNESS: That's correct.

11 BY MR. JOHNSON:

12 Q I'll ask you not to reveal to us anything
13 that you may have discussed with the Independent
14 Counsel or his representatives, but other than that
15 discussion, have you had any other discussions, as we
16 sit here today, with anyone on the topic of what you
17 observed Mr. Sloan say to Mr. Nussbaum on the
18 afternoon of the 22nd, excluding from your answer any
19 conversations you may have had with counsel?

20 MR. HAMILTON: Any non-privileged
21 conversations.

22 THE WITNESS: I testified in front of the

1 Grand Jury.

2 BY MR. JOHNSON:

3 Q Other than that?

4 A No.

5 Q You are aware, I'm sure, that early this
6 week, there were press accounts of your recollection
7 of the conversation between Mr. Sloan and Mr.
8 Nussbaum. Did you see those?

9 A Yes.

10 Q Have you been contacted by any attorneys
11 representing Mr. Sloan and Mr. Nussbaum after those
12 press accounts?

13 A Me personally? No.

14 Q Have you been contacted personally by
15 anyone in connection with your observations of the
16 conversation between Mr. Sloan and Mr. Nussbaum on
17 the afternoon of the 22nd?

18 A I've gotten numerous calls from the press,
19 to which I've said I'm not going to comment.

20 Q Other than press calls, have any attorneys
21 or any other individuals contacted you personally?

22 A No.

1 Q Have you been contacted by the White House
2 or anyone from the White House?

3 A No.

4 Q Now, Mr. Spafford, are you certain that
5 you recall correctly what Mr. Sloan said to Mr.
6 Nussbaum on that afternoon?

7 A Yes.

8 Q You're certain it was Mr. Sloan that was
9 in there?

10 A Yes.

11 Q It couldn't have been Mr. Neuwirth?

12 A No.

13 Q You're certain Mr. Nussbaum heard what Mr.
14 Sloan said?

15 A Well, I can't say what Mr. Nussbaum heard,
16 but he responded in the manner in which I testified.

17 Q You don't know Mr. Sloan personally?

18 A No.

19 Q You don't have any reason, I take it, to
20 wish ill of Mr. Sloan or Mr. Nussbaum, is that
21 correct?

22 A No.

1 (Pause.)

2 Q You testified that you made an appointment
3 to call Mr. Margolis on the 23rd, am I correct, to
4 discuss review of the personal documents by the
5 investigators?

6 A I did call him on the 23rd.

7 Q Did you make an arrangement for the
8 contents of the documents that you had taken from Mr.
9 Foster's office to be reviewed?

10 A Well, at that time, Mr. Margolis said that
11 members of the Park Police would be contacting us the
12 following week to talk about the manner of the
13 review.

14 Q And did they?

15 A Yes.

16 Q Did they physically come to your office?

17 A Yes, they did.

18 Q Do you recall whether that was before or
19 after you made the connection between Mr. Sloan's
20 comments to Mr. Nussbaum and the note being
21 discovered?

22 A I don't recall. I don't know. It's a

120

1 little fuzzy in terms of the sequence.

2 Q Whatever the sequencing, you did not
3 discuss with Park Police what you heard Mr. Sloan say
4 to Mr. Nussbaum?

5 A It wasn't an issue that they asked about
6 or raised with me, no.

7 Q Do you have any recollection today of
8 being aware of the conversation but intentionally not
9 raising it with the Park Police or was it perhaps
10 before you made the connection that the Park Police
11 visited your office?

12 MR. HAMILTON: That's a compound question.

13 THE WITNESS: Let me answer it this way.
14 The first time somebody asked me about it, I told
15 them, and that was Mr. Cavanaugh a couple of weeks
16 ago.

17 BY MR. JOHNSON:

18 Q Did you ever think to call Mr. Nussbaum
19 and ask him whether he recalled the conversation?

20 MR. HAMILTON: Are you asking him his
21 thought processes in terms of his investigation? I
22 think what he considered doing, what he did, I think

1 that's getting into privileged areas.

2 MR. JOHNSON: I'm not so sure about that
3 one, because his observations of the conversation
4 between Mr. Sloan and Mr. Nussbaum I don't think were
5 privileged. I don't think you've asserted any
6 privilege with respect to them.

7 MR. HAMILTON: But what he thought about
8 doing in terms of representing our client.

9 Why don't you ask him if he called Mr.
10 Nussbaum?

11 MR. JOHNSON: I know the answer to that
12 question.

13 BY MR. JOHNSON:

14 Q Did you ever call Mr. Nussbaum?

15 A No.

16 Q Did you ever call Mr. Sloan?

17 A No.

18 Q Did you ever call anyone at the White
19 House in connection with your observations?

20 A No.

21 Q After the Park Police came and reviewed
22 the personal effects or documents of Mr. Foster's

1 that you --

2 Strike that.

3 Sometime early in the following week, the
4 White House transmitted to you additional personal
5 documents of Mr. Foster, is that correct?

6 A Yes.

7 Q I have two letters which I'll show you,
8 one dated July 26th, 1993, apparently addressed to
9 you and signed by Bernard Nussbaum, and another which
10 appears to be a draft of a letter dated July 27th,
11 1993, also addressed to you, having a place for the
12 signature of Mr. Nussbaum but --

13 MR. KRAVITZ: Wasn't that addressed to Mr.
14 Hamilton?

15 MR. JOHNSON: I'm sorry, you're absolutely
16 right. Both of these are addressed to Mr. Hamilton.
17 (Handing documents to witness.)

18 BY MR. JOHNSON:

19 Q Have you ever seen either of these before?

20 A The one on the 27th we have the original
21 of that was signed by Mr. Nussbaum. This was the
22 letter that transmitted the box of documents.

1 The one on the 26th I saw for the first
2 time before this deposition when you showed it to me.
3 I've never seen it before and is inaccurate in fact
4 because I took the documents on the 22nd not the
5 23rd.

6 Q The letter dated the 26th erroneously
7 states that the documents were removed on the 23rd,
8 but the letter you actually received correctly states
9 that the documents were removed on the 22nd. Is that
10 right?

11 A Yes.

12 Q Other than the transmission of documents
13 that's reflected in the July 27th letter, did you
14 receive anything further from the White House?

15 A We at some point within the next week or
16 so received the briefcase.

17 Q Was it empty?

18 A Yes.

19 Q Did you ever receive the note or a
20 transcript of the note?

21 A I saw a transcript of the note in the
22 paper, so I'm familiar with its contents.

1 Q But it was never provided to you in any
2 form by the White House?

3 A I never saw the original note, no.

4 Q After the Park Police examination of the
5 documents that you personally took from the White
6 House, and were provided to you later, as well by the
7 White House, what's the next thing that occurred in
8 connection with your representation of the Foster
9 estate?

10 Exclude from your answer, any events or
11 conversations that may be privileged.

12 A Well, that's a hard question to answer.

13 Let me just say, from time to time, we had
14 to address issues relating to representation of the
15 Foster's in terms of -- it's hard to answer your
16 question.

17 Q Anything further in connection with the
18 documents that were in Mr. Foster's office. For
19 example, were there any further events or discussions
20 or conversations relating to the contents of Mr.
21 Foster's office?

22 A One thing. On the 27th, I transmitted to

1 Mr. Nussbaum a file which I had taken on the 22nd
2 which was not personal, which was General Counsel
3 Office issues. And there's a letter to Mr. Nussbaum.
4 We sent that back to him.

5 I also called Mr. Margolis and informed
6 him that I was doing that. But other than that, and
7 like I said, getting the briefcase, I don't recall
8 anything else.

9 Q There have been press reports that certain
10 people entered Mr. Foster's office late in the
11 evening on the 20th of July, 1993, the day of Mr.
12 Foster's death.

13 It's been reported, for example, that Mr.
14 Nussbaum entered that office. I take it you never
15 discussed that with Mr. Nussbaum other than we've
16 indicated earlier today?

17 A No, I haven't.

18 Q Have you ever had any conversations with
19 Maggie Williams on the topic of Mr. Foster's office?

20 A I don't know Maggie Williams. I've never
21 met her, never talked to her.

22 Q Patsy Thomasson?

1 A Don't know who she is.

2 Q Mr. Spafford, as we sit here today --

3 MR. JOHNSON: And counsel, this is not a
4 memory test, not designed to confuse but just to in
5 fact ascertain that I've concluded.

6 BY MR. JOHNSON:

7 Q Do you have any information to provide to
8 the Committee that relates to Mr. Foster's office or
9 the handling of the documents which is not privileged
10 and which we have not discussed?

11 A No, I think you've pretty well exhausted
12 the issue.

13 Q I'm sorry for the time this has taken. I
14 really appreciate your patience and cooperation.

15 MR. JOHNSON: Mr. Ben-Veniste will have
16 some questions, and at the end, I'll say a brief word
17 about confidentiality.

18 EXAMINATION

19 BY MR. BEN-VENISTE:

20 Q Mr. Spafford, my name's Richard Ben-
21 Veniste. I'm counsel to the minority.

22 I'd like to go over with you the

1 discussion which occurred in your presence as between
2 Mr. Margolis and Mr. Adams representing the
3 Department of Justice and Mr. Nussbaum, representing
4 the White House Counsel's Office, with respect to the
5 procedures under which the review of the contents of
6 Mr. Foster's offices would proceed.

7 If I understand your testimony, the
8 discussion centered around the competing interests as
9 between issues of privilege, both Executive and
10 attorney-client, as well as privacy and balanced
11 against an interest that the investigative agencies
12 had in discovering whether there was any information
13 in that office that would shed light on the cause of
14 Mr. Foster's death.

15 Is that correct?

16 A Yes.

17 Q You indicated that that conversation
18 occurred in your presence in a very professional and
19 modulated way?

20 A That's correct.

21 Q You didn't hear anyone raise his voice?

22 A No.

1 Q It is your testimony that Mr. Margolis did
2 not seem surprised that Mr. Nussbaum concluded that
3 under the circumstances, in view of this balance of
4 interests, he determined that he would proceed to
5 review the files, but would put aside for special
6 attention anything that the investigators indicated
7 they would like to see.

8 Is that correct?

9 A I'm not sure I got all of that, but I
10 don't recall Mr. Margolis expressing surprise over
11 the procedure that Mr. Nussbaum described.

12 Q For example, during the meeting, you
13 indicated that Mr. Nussbaum adopted a rather
14 practical approach to the issue of whether a review
15 of the contents of Mr. Foster's trash receptacle was
16 appropriate.

17 If I understand your testimony, in the
18 presence of the investigators, he simply went through
19 the items and described them.

20 A That's correct.

21 Q Was there anything that the Park Police or
22 the Department of Justice or the FBI or the Secret

1 Service wanted to see, as a result of the review of
2 the trash, as you recall?

3 A I think my notes indicated that there were
4 a couple of items of interest that they indicated.

5 Q And do you have any reason to believe that
6 they were not shown those items?

7 MR. JOHNSON: When?

8 BY MR. BEN-VENISTE:

9 Q You may answer.

10 A No.

11 Q Mr. Johnson asked you whether the name
12 Whitewater came up and you indicated that, to the
13 best of your knowledge, it did not.

14 Can you tell us what it was that Mr.
15 Margolis stated he was looking for, or interested in?

16 A Well, at the outset, Mr. Nussbaum had
17 stated that he viewed this as looking for a suicide
18 note, and Mr. Margolis appeared to generally agree
19 with that. And as the search proceeded, he said
20 describe the items of interest as things relating to
21 motive. Was he depressed, you know, indications of
22 why, if he committed suicide, or foul play, if there

1 were indications of threats.

2 Q Now at the end of the meeting, was there
3 any heated discussion in your presence, between Mr.
4 Margolis and Mr. Nussbaum?

5 A No.

6 Q Was there any indication that the
7 procedure had not been followed to Mr. Margolis'
8 satisfaction?

9 A You mean the one that was agreed on up
10 front?

11 Q Yes.

12 A No indication, no.

13 Q Did you hear at any point in the meeting
14 any of the investigators voice disapproval with the
15 procedures that had been outlined by Mr. Nussbaum?

16 A No.

17 Q You indicated that from the briefcase,
18 there were documents, and I don't mean to be all
19 inclusive, but there were documents identified as
20 Travel Office documents.

21 A My notes reflect that, yes.

22 Q Do you have any recollection, either

1 independent of your notes, or on the basis of
2 consulting your notes, as to whether anyone in that
3 room made a request to review Travel Office
4 documents?

5 A No.

6 Q There was also indicated in your notes a
7 letter in the briefcase to Attorney General Reno from
8 Senator Dole.

9 Can you tell us whether in fact that
10 document was requested by any of the investigators?

11 A Well, I don't have an arrow next to it in
12 my notes, but I do have a reference that says that it
13 mentioned Kennedy and I don't recall whether that was
14 something that Mr. Nussbaum volunteered or was in
15 response to a question.

16 The Kennedy was the gentleman on the White
17 House Staff, the General Counsel's Office.

18 Q Following that clarification by Mr.
19 Nussbaum, was there any request to see that document?

20 A According to my notes, no.

21 Q You indicate, I think, that the briefcase
22 was rather full. Is that correct?

1 A Yes.

2 Q And that after removing the files from the
3 briefcase, Mr. Nussbaum placed the briefcase back on
4 the floor?

5 A That's correct.

6 Q Did you see whether or not Mr. Nussbaum
7 looked into the briefcase after the files had been
8 removed?

9 (Pause.)

10 A I don't recall one way or the other.

11 MR. JOHNSON: One second.

12 (Discussion off the record.)

13 BY MR. BEN-VENISTE:

14 Q As Mr. Johnson was going through your
15 handwritten notes, perhaps because of the lateness of
16 the hour, or perhaps because we got diverted on some
17 other subject, for some reason we did not cover what
18 is listed as credenza: on R, signifying right.

19 MR. JOHNSON: Richard, what page are you
20 on?

21 MR. BEN-VENISTE: These aren't numbered
22 pages, so I'm going to ask you to find the page that

1 has that at the top of it.

2 THE WITNESS: It appears to be the sixth
3 page of the notes. It says Credenza: On R, which is
4 on right.

5 Is that what you're talking about?

6 BY MR. BEN-VENISTE:

7 Q That's correct.

8 With respect to that heading, does the
9 first item reflect matters regarding the First
10 Family?

11 A Yes.

12 Q Now was there any request by any of the
13 investigators in the room to review those materials?

14 A No.

15 Q Similarly, on the first page of your notes
16 I believe there's a reference to documents relating
17 to the First Family (trust, etcetera). Was there any
18 request by any of the persons in the room that
19 afternoon to review those materials?

20 A No.

21 Q Let me go to the issue of your
22 conversation with Mr. Margolis about serving a

1 subpoena.

2 Is there any point subsequent to March
3 22nd, when this subject was ever raised again by Mr.
4 Margolis or anyone representing the Government?

5 MR. JOHNSON: July 22nd.

6 MR. BEN-VENISTE: I'm sorry, July 22nd.

7 THE WITNESS: No.

8 BY MR. BEN-VENISTE:

9 Q So that was the first and last that you've
10 heard about the notion that a subpoena might be
11 served with respect to any document associated with
12 Mr. Foster's office?

13 A That's correct.

14 Q Indeed, did you, in your conversations and
15 other dealings with the investigators who came to
16 review documents at your offices, that they were
17 unsatisfied with the cooperation, with the
18 cooperation that you had offered them?

19 A No.

20 Q Was there any materials that were
21 requested by any of the investigating agencies that
22 you refused or declined to make available to them?

1 A No.

2 Q Indeed, according to a report I think in
3 last year's hearings before the Senate, it was
4 reflected that Park Police investigators looked
5 through a private diary which was maintained by Mr.
6 Foster which was made available by you to them, is
7 that correct?

8 A I don't know if I'd characterize it as a
9 diary. There was a book that had some personal
10 observations on specific dates, and they reviewed
11 that, the Park Police.

12 Q You did not decline or refuse to allow
13 them to review that?

14 A No.

15 Q At the same time, is it fair to say that
16 your interest was in attempting to minimize the
17 tremendous amount of publicity that had attended Mr.
18 Foster's suicide in connection with the wishes of the
19 family?

20 A That's correct.

21 Q When Mr. Sloan made the remark which you
22 have testified you overheard to Mr. Nussbaum

136

1 concerning the scraps of paper in the briefcase, was
2 Mr. Nussbaum sitting on the couch of Mr. Foster's
3 office, or was he behind the desk?

4 A I'm not sure whether it was a couch or a
5 chair, but he was sitting on one of those in front of
6 the desk.

7 Q Was the search still going on, was the
8 inventory still going on, or had, at that point, the
9 investigators left the office?

10 A The investigators had left; the search was
11 concluded.

12 Q You've indicated that Mr. Nussbaum, at
13 that point, seemed physically spent. Would that be a
14 correct statement?

15 A I was waiting for you to finish your
16 question. Yes.

17 Q Did you have some observation of Mr.
18 Nussbaum's emotional state at that point?

19 A Well, at one point, he communicated to me,
20 and I'm not sure whether it was in that meeting or
21 the general discussion, but he said something about
22 how he had worked closely with Mr. Foster and this

1 was an extremely upsetting event. And I would
2 characterize him as being distraught over the loss of
3 a friend and close associate.

4 Q At the point that Mr. Sloan made the
5 comment to him about the scraps of paper, was it at
6 that point where he, in your view, became exhausted
7 and slumped on the sofa or the chair he was sitting
8 on, or was he already in that state at the point the
9 remark was made?

10 A He was already there.

11 Q So that the state of exhaustion and being
12 slumped was not, as far as you could tell, the result
13 of hearing this observation by Mr. Sloan?

14 A No, it was not.

15 (Pause.)

16 Q Now the first time that you repeated what
17 you had seen and observed in connection with Mr.
18 Sloan's comments and Mr. Nussbaum's reaction to
19 someone in an unprivileged context was when you
20 related that information to a representative of
21 Independent Counsel Starr's office, is that correct?

22 A Yes.

1 Q That occurred approximately how long ago?

2 A Three weeks ago, a month, something like
3 that.

4 Q Was that the first time that you were
5 interviewed in connection with your observations on
6 that day?

7 A Well, I'm having trouble with the
8 question.

9 Let me answer it this way. An FBI agent
10 who worked with Fisk called me last year when I was
11 in the middle of a trial in West Virginia. We had a
12 ten-minute conversation. He asked general
13 statements, focusing on whether or not the
14 investigators had objected and whether or not the
15 procedures were agreed upon, ten-minute conversation.
16 I was never asked a question about the briefcase or
17 anything relating to that, so we never got into it.

18 The first time I was asked the question
19 was when Mr. Cavanaugh asked it.

20 Q Have you been furnished with a copy of any
21 report made by the FBI agent who was working under
22 Mr. Fisk's direction?

1 A No, I don't have a copy.

2 Q But your recollection is that that agent's
3 questions focused on matters that did not call for
4 your recollection of Mr. Sloan's comment?

5 Is that correct?

6 A That's correct.

7 Q I take it is your position, on advice of
8 your counsel, that you do not wish to describe any
9 conversations that you had that might be in a
10 privileged context?

11 A That's correct.

12 Q Mr. Johnson mentioned press accounts that
13 have appeared in recent days relating to the subject
14 of your observation on July 22nd, 1993.

15 Let me ask you whether you initiated any
16 attempt to inform the press of what you had provided
17 to the Independent Counsel's office?

18 A No.

19 Q To the best of your knowledge, do you know
20 how that material first became known to the press?

21 A I have no idea.

22 Q It was not through you or your attorneys?

140

1 A As you stated earlier, it was our intent

2 --

3 Well, let me strike that.

4 No. It's getting late.

5 Q I appreciate that.

6 Other than in connection with being
7 represented by counsel and your conversations with
8 representatives of the Independent Counsel's office,
9 and your testimony in the Grand Jury, did you repeat
10 the information concerning your observations of
11 July 22nd, 1993, to any third party?

12 A No.

13 Q Can you explain how the material came into
14 the hands of the press?

15 A No.

16 MR. BEN-VENISTE: I have nothing further.

17 MR. JOHNSON: Mr. Spafford, I have about
18 two minutes of follow-up questions.

19 FURTHER EXAMINATION

20 BY MR. JOHNSON:

21 Q At the conclusion of the meeting in Mr.

22 Foster's office on the afternoon of July 22nd, was

1 there any conversation that you overheard or
2 participated in on the topic of whether or not the
3 office should remain sealed after that meeting?

4 A No.

5 Q Mr. Ben-Veniste asked you about the review
6 that was conducted of the trash.

7 Do you remember his asking you that
8 question?

9 A I remember questions about the trash, yes.

10 Q And he asked you whether, to the best of
11 your knowledge, the investigators were able to see
12 everything that they requested in the trash, and you
13 said yes.

14 Do you remember that?

15 MR. BEN-VENISTE: That wasn't the
16 question.

17 THE WITNESS: I'm not sure that was the
18 question or the answer.

19 MR. BEN-VENISTE: The question was whether
20 he had any reason to believe that the investigators
21 were denied access to anything that they had
22 requested in that trash.

1 MR. JOHNSON: I actually believe it was
2 not, but we'll surprise ourselves by reading the
3 transcript.

4 BY MR. JOHNSON:

5 Q My question is this: They didn't review
6 the trash in that meeting, isn't that right?

7 A That's correct.

8 Q So they were denied access in that
9 meeting, isn't that right?

10 MR. BEN-VENISTE: I would object to that
11 categorization.

12 MR. JOHNSON: Richard, you asked a hundred
13 leading questions, so let me ask one.

14 MR. HAMILTON: I'm glad you agree it was a
15 leading question.

16 BY MR. JOHNSON:

17 Q Were they denied access in that meeting?

18 A They did not review the trash.

19 Q Did they request to review the trash?

20 A Well, my notes reflect that Mr. Margolis
21 said, put certain items in the file of important or
22 interesting documents that they wanted to review

1 later.

2 Q I thought your note specifically said FBI
3 said, can we see the trash?

4 A Let me back up. I thought we testified
5 about this earlier, but the FBI raised the question,
6 can they look through the trash. There was then a
7 discussion about abandonment, as my notes reflect.

8 Margolis said he clearly waived this, this
9 is abandonment.

10 Mr. Nussbaum responded, no, he disagreed
11 with that characterization of the privilege issue and
12 abandonment, but he took a practical approach; let's
13 go through what's in the trash, so then he went
14 through it, as my notes reflect, and there are
15 arrows, you'll see, where Mr. Margolis said, those
16 are items I'd like to look at, let's put them in the
17 pile of documents that are, for lack of a better
18 description, the ones that he wanted to look at
19 later.

20 Q That's helpful, thanks.

21 The FBI specifically asked to look at the
22 trash. You do recall that?

1 A My notes say, FBI can they look through
2 trash.

3 Q Mr. Margolis said, to the best of your
4 recollection, the trash can't be privileged, they
5 abandoned it, they threw it out. Is that fair? Is
6 that essentially what he said?

7 A Generally something to that effect, yes.

8 Q And you recall that Mr. Nussbaum
9 disagreed, that throwing trash out was not an
10 abandonment of the privilege that he was maintaining?

11 MR. BEN-VENISTE: Kip, we've been over
12 this three times. It's ten minutes to 9:00 at night.

13 THE WITNESS: Yes.

14 BY MR. JOHNSON:

15 Q And then after that, in your presence,
16 were the investigators allowed to review the trash in
17 that meeting?

18 A No.

19 Q Now, Mr. Ben-Veniste asked you what Mr.
20 Margolis described at the beginning of the meeting
21 that they were looking for. Do you remember his
22 asking you that?

1 A Yes.

2 Q You said that, generally speaking, they
3 were looking for a suicide note or other matters that
4 may indicate motive, or words to that effect.

5 Do you recall that?

6 A Yes.

7 Q But Mr. Nussbaum, in the course of
8 describing the documents, described the contents of
9 all kinds of documents that didn't relate to motive
10 and which were not a suicide note.

11 Isn't that a fair statement?

12 A I don't know. I'd have to look through my
13 notes and see all the stuff that he identified.

14 Q Take a look at the first page of your
15 notes.

16 For example, it says, articles on health
17 care. You see that?

18 A Yes, I see that.

19 Q So we can go through a lot of them but
20 would you agree with me that there are a lot of
21 descriptions of documents, the content of which seems
22 perfectly innocuous, is that right?

1 A Yes.

2 Q And again let me just be very clear for
3 the record. There's no mention in any of your notes
4 here of a file called Whitewater, am I right about
5 that?

6 MR. BEN-VENISTE: Did we cover that
7 earlier, or am I just having a deja vu?

8 MR. JOHNSON: Rich, I really don't know
9 why you say those things. You go through cross
10 examination style questioning with an eye towards
11 suggesting that they would not have mentioned
12 Whitewater because it wasn't a suicide note and it
13 didn't indicate motive, and I'm establishing, I think
14 not in a deceitful way, that there are lots of things
15 in here that don't indicate motive and are not a
16 suicide note, and that notwithstanding that, the
17 Whitewater has not been mentioned.

18 MR. BEN-VENISTE: Kip, calm down. My
19 point is that you asked this on direct examination
20 several times, not just once, and now you're coming
21 back to it.

22 THE WITNESS: Can we move on?

1 MR. HAMILTON: All I would say is that Mr.
2 Spafford is tired and while this dispute between
3 counsel may be intellectually interesting, it's a
4 little bit tiring at this time of night.

5 MR. JOHNSON: I couldn't agree with you
6 more.

7 BY MR. JOHNSON:

8 Q Whitewater is not mentioned in here, Mr.
9 Spafford, is it?

10 A Not in my notes, no.

11 Q And you don't recall his mentioning it in
12 the meeting at the time?

13 A No, I don't.

14 Q Mr. Ben-Veniste directed your attention to
15 an entry which he indicates correctly that I didn't
16 cover. I think it's on page six of the unnumbered
17 handwritten notes.

18 It says "matters re First Family
19 underneath Credenza on right." Do you see that?

20 A Yes.

21 Q To the best of your knowledge, is that how
22 Mr. Nussbaum described the file or documents that he

1 was looking at?

2 A Well, again, I don't think this is a
3 verbatim transcript but, yes. I tried to generally
4 write down what he said.

5 Q So he didn't describe any more
6 specifically than what you reflect there what the
7 content of that file was, simply matters re First
8 Family. Am I right?

9 A That's correct.

10 Q And under the procedures for the meeting,
11 the investigators were required to make a
12 determination, based upon that description, and that
13 description alone, about whether or not they wanted
14 to review the contents of that file?

15 A Well, except as I discussed and testified
16 to earlier, Mr. Margolis did ask, and Mr. Nussbaum
17 indicated agreement to look through all the files,
18 etcetera, for items along the lines that Mr. Margolis
19 had identified.

20 Q Maybe I misspoke.

21 To the best of your knowledge, under the
22 procedures, did the investigators have any more

1 information to base a request for documents, other
2 than the information that's provided here: Matters Re
3 First Family?

4 A That specific document?

5 Q Yes, sir.

6 A No, they didn't ask any questions about
7 it.

8 Q I'm asking a slightly different question.
9 That's all you knew about that. That's the only
10 indication of the content that you had, is that
11 right?

12 A That's correct.

13 Q So to the best of your knowledge, that's
14 the only indication of the content that the
15 investigators also had?

16 A That's correct.

17 Q You described Mr. Nussbaum, in this
18 response to Mr. Ben-Veniste's question, as being
19 physically exhausted at the end of the meeting on the
20 22nd, is that correct?

21 A Yes.

22 Q You didn't mean to imply that he was too

1 tired to look at one more document, did you?

2 A I was just expressing my observations of
3 what he looked like and how he acted.

4 MR. JOHNSON: All of us will join in the
5 request for confidentiality. Leaks to the media are
6 a great concern to all of us. It's my fondest hope
7 that it didn't come from anyone here. It's my belief
8 that it did not.

9 But for whatever it's worth, it would be
10 useful to us if you would not discuss this deposition
11 here with anyone.

12 THE WITNESS: That is in perfect agreement
13 with me.

14 MR. JOHNSON: Thank you.

15 MR. HAMILTON: Let me just make one
16 comment on the record.

17 First of all, I want to thank both the
18 majority and minority counsel for their courtesies.

19 Secondly, I have one more courtesy to ask,
20 which is this: If, by some chance, the Committee
21 wants Mr. Spafford as a witness in the public
22 hearing, I would request that it be before July 29th.

1 I am leaving the country on July 29th and I think Mr.
2 Spafford has the right to counsel of his choice, and
3 I will not be available for two weeks.

4 So if you do decide to call him, if you
5 would do it before.

6 I would also ask that it not be on July
7 20th, but I realize that you do have your scheduling
8 difficulties.

9 MR. JOHNSON: Thanks, Jim.

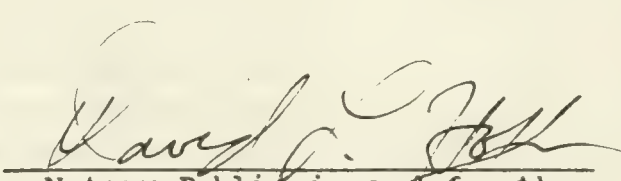
10 (Whereupon, at 9:00 p.m., Tuesday,
11 July 11, 1995, the taking of the deposition ceased.)
12
13

14 MICHAEL L. SPAFFORD
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

152

I, David L. Hoffman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires 6/30/00

DEPONENT Michael L. Spafford

ERRATA

[illegible]

**DEPOSITION OF PATSY L. THOMASSON
IN RE: S. RES. 120**

TUESDAY, JULY 11, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of PATSY L. THOMASSON, called for examination pursuant to notice of deposition, at 2:20 p.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, Esq.
Majority Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
GLENN F. IVEY, Esq.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

DAVID H. WILLIAMS, Esq.
Attorney at Law
350 Gans Building
217 West Second Street
Little Rock, Arkansas 72201
On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Patsy L. Thomasson | |
| by Mr. Chertoff | 3 |
| by Mr. Ben-Veniste | 88 |
| by Mr. Chertoff | 98 |
| by Mr. Ben-Veniste | 100 |

P R O C E E D I N G S

Whereupon,

PATSY L. THOMASSON

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. CHERTOFF:

Q Would you spell your name for the reporter?

A P-a-t-s-y, middle initial L as in laugh, last name is T-h-o-m-a-s-s-o-n.

Q Ms. Thomasson, my name is Michael Chertoff. I'm special counsel to the special Senate committee conducting the deposition and Mr. Ben-Veniste is the Democratic counsel for the same committee.

I want to make some preliminary observations to you before we get going. This deposition is being conducted pursuant to Senate Resolution 120 which establishes a special committee to conduct an investigation into Whitewater Development Corporation and certain other related matters.

Section 1.B.1 of that resolution authorizes an investigation and public hearings into "whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death." And that's going to be the focus of today's deposition.

How did you first learn that you were first being requested to testify here?

A White House counsel's office told me.

Q Did they ask you, in connection with this deposition, to produce any documents?

A I produced documents prior to being told that there were going to be depositions.

Q Is that a production you made in connection with another investigation?

A Not to my knowledge. I believe that production was done for these hearings, that there were other documents produced maybe at a later time for another purpose that were crossover documents.

Q Are there any documents that you have not produced to the White House counsel that are

1 responsive to a request for documents regarding the
2 handling of the Vincent Foster papers following his
3 death?

4 A As far as I know, I provided everything
5 that's been asked for.

6 Q You don't have any diaries or personal
7 notes or things of that sort that you haven't
8 provided?

9 A No, sir.

10 Q I should advise you that this deposition is
11 in anticipation of a public hearing to begin -- it's
12 anticipated next Tuesday and to run for several weeks
13 thereafter. And there's a likelihood that you'll be
14 asked to testify at the hearing.

15 Now, in the course of this deposition, I'm
16 going to ask you a series of questions, which you're
17 obviously obliged to answer, under oath. If you
18 don't understand a question, please let me know and
19 I'll rephrase it or clarify it. Similarly, please
20 don't guess or speculate unless I ask you to guess or
21 speculate. Generally speaking, though, we're
22 interested in having answers that are based on either

1 your own firsthand knowledge or what you've been told
2 by somebody else.

3 The stenographer is going to prepare a
4 record of the questions and answers. Those will be
5 held committee confidential until the hearings
6 begin. Once the hearings begin, some or all of the
7 deposition may become public.

8 What that means also is that approximately
9 four days, or exactly four days before the hearings
10 begin, a copy of this deposition will become
11 available to you at the Senate so you can review it
12 and make corrections to the transcript. But when I
13 say "corrections," I have to advise you that if you
14 make corrections other than ministerial or clerical
15 corrections, those changes could themselves become a
16 basis to redepose you.

17 Four days before you are called to testify
18 as a witness, you will receive a copy of the
19 deposition for your own personal possession, provided
20 that you agree to abide by the condition that you
21 will keep that deposition confidential between
22 yourself and your lawyer, and not disseminate the

1 content of the deposition beyond yourself and your
2 own counsel.

3 Now, during the course of the proceedings,
4 you may want to take a break. Let us know. We'll go
5 off the record and you can take a break.

6 You have counsel present and I'll ask
7 counsel to identify himself for the record.

8 MR. WILLIAMS: David Williams of Little
9 Rock, Arkansas.

10 BY MR. CHERTOFF:

11 Q Now, Mr. Williams may want to confer with
12 you. You may want to confer with him during the
13 deposition. Indicate that you want to. We'll go off
14 the record. If you want privacy, you can step
15 outside. We'll make an office available. There may
16 be objections to the form of a question.

17 Let us get the objections out on the record
18 and then you can answer the question. If you get an
19 objection or you hear an objection coupled with a
20 request that you not answer, wait until we have all
21 addressed it on the record. And then depending on
22 whether you're instructed to answer or not answer,

1 you should behave accordingly.

2 I can advise you if you are instructed by
3 your counsel not to answer a question, we may either
4 bypass the issue or we may take it up with the
5 Chairman who has the authority ultimately to rule on
6 objections. Is there anything about what I've
7 outlined to you that you need clarified or you'd like
8 explained more?

9 A No.

10 Q Let me ask you, since you've been notified
11 about the request to attend this deposition, have you
12 spoken to anybody about the subject matter of this
13 deposition, other than your lawyer or members of your
14 immediate family?

15 A No, I have not.

16 Q Without telling me what you have said to
17 them, am I correct that you have previously been
18 interviewed by or testified in connection with other
19 investigations?

20 A That's correct.

21 Q And have you discussed the substance of
22 those interviews or testimony with anybody after the

1 fact, except for your lawyer or members of your
2 immediate family?

3 A With my lawyer.

4 Q Just your lawyer?

5 A Just with my lawyer.

6 Q And not with anybody at the White House?

7 A No.

8 Q Have you talked to White House counsel
9 about any of your interviews or prior testimony?

10 A No. I did discuss one thing that was
11 hysterical, whether I went up the staircase or down
12 the elevator or whether I went down the staircase or
13 down the elevator. I thought that was -- it was sort
14 of an inane question and I did say that to White
15 House counsel.

16 Q Which White House counsel was that?

17 A Miriam Nemetz.

18 Q I take it she is an associate counsel?

19 A She is an associate counsel.

20 Q Who was the White House counsel at the
21 time?

22 A Mr. Mikva.

10

1 Q When did you have occasion to raise this
2 with Ms. Nemetz?

3 A She knew that I had gone and she asked me
4 how it went, and I said I could answer all the
5 questions about whether I went down the stairs or up
6 the stairs or down the elevator or up the elevator.

7

8

9

10 Q And where do you work now?

11 A I work at the White House.

12 Q What's your current position?

13 A I'm deputy assistant to the President and
14 assistant director for presidential personnel.

15 Q Have you held that position since January
16 1993?

17 A No, I have not. I started in that position
18 in May of 1995.

19 Q And what positions did you hold at the
20 White House before that?

21 A Prior to that, I was director of the office
22 of administration and special assistant to the

1 President for management and administration.

2 Q And during what period of time was that?

3 A March the 1st of 1993 until I went over to
4 presidential personnel the latter part of May of
5 1995.

6 Q When did you begin working at the White
7 House?

8 A March the 1st of 1993.

9 Q Let me go backwards now and ask you, how
10 far did you go in school?

11 A I have a graduate degree from the
12 University of Missouri, Columbia so I have a master's
13 degree.

14 Q When did you get that?

15 A In December of 1972.

16 Q What did you do after 1972 for a living?

17 A I worked in former Congressman Wilbur
18 Mills's office for 2-1/2, almost three years and I
19 left there and went to work for a company called
20 Hospital Affiliates International that had a 340-bed
21 hospital in Little Rock, as an assistant
22 administrator there; later became an associate

1 administrator.

2 I left Doctors Hospital in December of 1978
3 and formed my own hospital management company, had a
4 couple of partners and managed and operated hospitals
5 and nursing homes from December of '78 -- we worked
6 at doing that from December of '78 through 1983.

7 In 1983 I went to work for Dan Lassiter,
8 worked for either him or one of his companies from
9 1993 until the summer of '92 --

10 Q You mean 1983?

11 A 1983 through the summer of 1992. And in
12 midsummer of '92 I went to work for the Democratic
13 Party of Arkansas for which I worked until March the
14 1st of 1993.

15 Q Did you work on the Clinton campaign at
16 all?

17 A I worked for the Democratic Party of
18 Arkansas that was responsible for the GOTV and the
19 coordinated campaign in the state of Arkansas for all
20 Democrats.

21 Q But you didn't work on the national
22 campaign?

1 A No.

2 Q When you worked for Mr. Lassiter, what
3 business was he in?

4 A Mr. Lassiter had a number of businesses. I
5 first worked for Mr. Lassiter in an investment
6 banking company he owned, and I did that for six
7 months. And after that I went to work for another
8 company that he owned called LFI Corporation that
9 managed and operated different kinds of real estate
10 and horse interests, thoroughbred interests.

11 And later on I went to work -- and I don't
12 know exactly the year that I switched over to the
13 holding company payroll and that was called Lassiter,
14 Inc. and I worked for them until I left Lassiter at
15 the end of -- mid-July of 1992.

16 Q And what was your position -- what
17 positions did you hold at Lassiter, Inc., the holding
18 company?

19 A Lassiter, Inc. the holding company, at one
20 time I was President of Lassiter, Inc., and later on
21 I switched back to just being an executive vice
22 president. I was first an executive vice president,

1 then I became the president and then I went back to
2 being executive vice president.

3 Q What kind of business was Lassiter, Inc.
4 in?

5 A It was a holding company. It owned a
6 company that had real estate holdings in New Mexico.
7 It had a company that hold real estate companies in
8 Arkansas. It owned a management company. It owned a
9 servicing company that was responsible for servicing
10 time share and land sale paper. It owned the
11 investment banking firm as part of its holdings.

12 Q Did it have any connection with Madison
13 Guaranty?

14 A Did Lassiter, Inc.?

15 Q Yes.

16 A Not to my knowledge.

17 Q Did no business with them?

18 A Lassiter, Inc. did not.

19 Q Did any of the Lassiter subsidiaries?

20 A One of its subsidiaries had a loan with
21 Madison Guaranty.

22 Q Which subsidiary?

1 A Emerald Isle Condominiums, Inc.

2 Q When was the loan taken out?

3 MR. BEN-VENISTE: What was the question?

4 (The reporter read the record as requested.)

5 MR. BEN-VENISTE: You're getting into
6 Madison Guaranty loans between Lassiter and Madison
7 Guaranty? I'll object to you getting into that.

8 MR. CHERTOFF: On what basis?

9 MR. BEN-VENISTE: On the theory it has
10 nothing to do with the handling of the Foster papers.

11 MR. CHERTOFF: You've put your objection on
12 the record. I mean --

13 MR. BEN-VENISTE: Are we going to start
14 now, taking depositions where the week before these
15 hearings are going to start, going into issues of
16 Madison Guaranty Bank?

17 MR. CHERTOFF: No. We're going to get into
18 knowledge the witness had regarding documents that
19 were held in Mr. Foster's office.

20 MR. BEN-VENISTE: Why don't we work the
21 other way. I would appreciate it if you would do
22 that because our time is limited and -- I know yours

1 is -- and I know this is not the point that we go
2 into the Madison Guaranty investigation.

3 MR. CHERTOFF: I'm not intending to go into
4 it, Mr. Ben-Veniste, but I am intending to find out
5 about the witness's knowledge about it. So I'd like
6 to proceed and ask for the time period in which the
7 loan was taken out.

8 MR. BEN-VENISTE: I don't even know if, in
9 fairness to the witness, whether this witness has
10 been prepared to testify about those issues.

11 MR. CHERTOFF: The witness can --

12 MR. BEN-VENISTE: It's my understanding
13 that our arrangement and agreement has been that if
14 there is information relevant to what Mr. Foster was
15 working on at the time of his death and whether
16 particular witnesses knew what he was working on and
17 those matters were of some sensitivity, that that
18 would be an appropriate area of inquiry. But to go
19 into the details of banking arguments between Madison
20 Guaranty and some other third party seemingly
21 unrelated to Mr. Foster is, in my view, somewhat far
22 afield to the purposes of these hearings.

1 MR. CHERTOFF: I think that we're going to
2 get into the area of the witness's knowledge
3 concerning things that are within the purview of what
4 Mr. Foster was working on but I don't want to have a
5 long discussion in front of the witness.

6 I'm going to ask that the witness answer
7 the question.

8 BY MR. CHERTOFF:

9 Q When was the loan taken out?

10 MR. BEN-VENISTE: I'm going to object to
11 that and perhaps we ought to get some guidance.

12 MR. CHERTOFF: We'll -- what I'll do is ask
13 questions and if there are objections on scope, we'll
14 put them aside and take it up with the Chairman in
15 due course.

16 BY MR. CHERTOFF:

17 Q Were you personally involved or personally
18 familiar with the circumstances of the loan from
19 Madison Guaranty to this Lassiter subsidiary?

20 MR. BEN-VENISTE: What year are we talking
21 about?

22 MR. CHERTOFF: I asked the question and you

1 objected to it.

2 MR. BEN-VENISTE: Can we at least fix a
3 time as to whether this was in 1992 or 1982 or '85?

4 MR. CHERTOFF: I would be delighted to but
5 since you previously objected to my effort to do so,
6 it seems odd now that you're complaining and when I
7 failed to do it --

8 MR. BEN-VENISTE: I object you getting into
9 it but if you make a representation that this is in
10 some proximity to Mr. Foster's death, since this
11 witness indicated that she worked for Mr. Lassiter up
12 until some point in 1992, it's remotely possible. So
13 if we could at least --

14 BY MR. CHERTOFF:

15 Q Now I will ask the question again. When
16 was the loan taken out?

17 A I didn't have any responsibility for taking
18 the loan out, but I think that loan -- I believe the
19 loan went on the books sometime in 1985.

20 Q And do you know when --

21 MR. BEN-VENISTE: So now I really have to
22 say that this is so far afield. It's eight years

1 before Mr. Foster's death. It's got nothing to do,
2 as far as I can see, with the issues of this hearing.

3 MR. CHERTOFF: I'm going to ask the next
4 question.

5 MR. BEN-VENISTE: I thought you said you
6 were going to defer this as an area?

7 MR. CHERTOFF: Mr. Ben-Veniste, if you want
8 to instruct the witness not to answer, that's fine;
9 but if you want to prevent me from asking questions,
10 that's not fine. I'm going to ask the next question,
11 which is when was the loan extinguished from the
12 books, if ever.

13 MR. BEN-VENISTE: Let's go off the record.
14 Let's get a ruling now. If it's your intention to --
15 it's either we're going to defer it or we're not
16 going to defer it, but if you continue to ask the
17 questions, having agreed we're going to defer it,
18 then I think we ought to get a ruling from the
19 members.

20 MR. CHERTOFF: Having asked the question
21 which you objected to and agreed to defer it and then
22 having had you complain that we didn't know the time

1 frame, having asked when the loans went on the book,
2 it makes perfect sense to find out when the loans
3 went off the books because it seems to me if the
4 timing is a matter that bears on the relevance, then
5 the timing of the loan ending is as relevant as the
6 time of the loan beginning.

7 MR. BEN-VENISTE: In order to address the
8 objection that I think is presented by this line of
9 inquiry, if you could ask whether Ms. Thomasson had
10 any reason to believe that Mr. Foster was working on
11 any issue associated with Madison Guaranty's loan to
12 Mr. Lassiter, at the time of his death, then my
13 objection to this line of inquiry at this point will
14 be withdrawn. If you would do that, then we can have
15 a clear issue.

16 MR. CHERTOFF: What is the basis of your
17 objection?

18 MR. BEN-VENISTE: The basis of my objection
19 is for us now to go into issues of Madison Guaranty
20 loans to individuals is inappropriate at this stage
21 of this deposition process, and it goes against the
22 understandings that we have been operating under.

1 MR. CHERTOFF: We have a written --
2 pursuant to your request, we obtained written
3 confirmation of the Independent Counsel's view of
4 this. I'm just going to ask a couple more
5 questions. If you want to make your objections,
6 we'll flag it and come back to it later, but we're
7 wasting a lot more time arguing about it than we
8 would have if we put the questions on the record.
9 I'll put them on the record. You can object to them
10 but to try to talk over me to prevent me from saying
11 things doesn't make a lot of sense.

12 MR. BEN-VENISTE: I apologize if you think
13 I have done that but what I have been attempting to
14 do is to get this in some orderly process so we have
15 a record that, if you wish to press, then we can have
16 the record available to whoever will make a
17 determination.

18 BY MR. CHERTOFF:

19 Q When was the loan extinguished?

20 MR. BEN-VENISTE: If this witness knows.

21 THE WITNESS: It was extinguished sometime
22 in 1991.

22

1 BY MR. CHERTOFF:

2 Q And are you familiar with Whitewater
3 Development Corporation?

4 A I've read about it, yes.

5 Q Did that do any business with Lassiter?

6 A Not to my knowledge.

7 Q Or with any of its subsidiaries?

8 A Not to my knowledge.

9 Q Were you the chief executive officer of
10 Lassiter at any point in time?

11 A Lassiter, Inc., the holding company?

12 Q Yes.

13 A Yes, I was.

14 Q And during what period of time?

15 A From January of 1987 through sometime in
16 1991.

17 Q And in 1991, you stepped down from being
18 chief executive?

19 A Uh-huh.

20 Q Who became chief executive at that point?

21 A Mr. Lassiter.

22 Q Am I correct that Mr. Lassiter was in

1 prison during the intervening period of time?

2 A Mr. Lassiter was in prison for a period of
3 time but not the entire period of time. Mr. Lassiter
4 was in prison for six months of that period.

5 Q And the balance of that time was while he
6 was facing charges?

7 A No.

8 Q Why did he step down during that period of
9 time?

10 A He stepped down in January of 1987 because
11 he was going to prison. He came back from prison in
12 June or July of 1987, and he didn't opt to go back in
13 as chairman or as president of the company at that
14 time. I continued to have that role until sometime
15 in 1991.

16 Q How did you come to work in the White
17 House?

18 A After I had worked for the Democratic
19 Party, in the fall of '92 and during the
20 get-out-the-vote effort in Arkansas, I came up to
21 Washington and worked during the inaugural week and
22 prior to the inauguration, getting ready for the

1 things for the Arkansans that were coming here and
2 there was a huge delegation of Arkansans that came.

3 During the inaugural week I was asked to
4 leave some materials from the Democratic Party, some
5 trinkets that we had had printed and we gave those to
6 David Watkins at the White House so I was asked to
7 deliver them there, which I did. And once I
8 delivered the trinkets, I went by to see Mr. Watkins
9 in his office and he had a couple minutes for me and
10 we exchanged greetings. He thanked me for bringing
11 the stuff by.

12 I said to him if you have any job you think
13 I might be suited to, give me a call. I'd like to
14 consider coming up here. So quite frankly, I didn't
15 expect to hear anything from him. I went back to
16 Arkansas and worked on a project that I was working
17 on there, but about three weeks later, Mr. Watkins
18 called and said he had a job in mind for me and would
19 I send him a resume, which I did, and he called me on
20 Saturday morning and I sent it on Monday.

21 He called again on Wednesday afternoon and
22 Thursday night I flew up to Washington, interviewed

1 here on Friday and Saturday. And I was offered a job
2 as director of the office of administration and
3 special assistant to the President. And I accepted
4 that job, went home for a week and finalized my work
5 with the Democratic Party and packed my stuff on
6 Sunday and came back and went to work on Monday.

7 Q What did your job duties entail as director
8 of the office of administration?

9 A The office of the administration is the
10 administrative arm of the executive office of the
11 President and we run the financial management, the
12 personnel management, the computer shop, the
13 telephones. We have a legal counsel, the libraries,
14 mail delivery, package delivery and purchasing, so I
15 have responsibility for those things.

16 Q And who did you report to?

17 A I reported to Mr. Watkins.

18 Q Who reported to you?

19 A Who reported to me?

20 Q Who was in the direct reporting
21 relationship with you?

22 A The director of -- when I first started?

1 The director of financial management was a man named
2 Ron Rasmussen. Mary Beck was the acting personnel
3 director. She reported directly to me. The director
4 of information systems technology when I first
5 started was a guy named Arnie Shore who reported
6 directly to me. The legal counsel was Bruce Overton
7 who reported to me and the guy that was head of
8 administrative operations division was a guy named
9 Jack Brennan who reported to me.

10 Q When did you first meet Mr. Watkins?

11 A I've known David Watkins off and on for
12 several years. I've never been a close friend of
13 David Watkins, but I've known who he was. He was in
14 the advertising business and I didn't have any need
15 for an advertising business and so I never worked
16 closely with him on anything or anything like that.

17 Q But how did you first get to know him?

18 A I have no idea where I first met David
19 Watkins.

20 Q When did you first meet the Clintons?

21 A I first met the President in 1968 when we
22 both worked in the campaign of Senator Bill

1 Fulbright's reelection in 1968.

2 Q Did you remain friendly with him after that
3 point in time?

4 A Oh, yeah. The President was always a very
5 gregarious kind of guy. And immediately after the
6 campaign was over, the President went to London to
7 spend another year at Oxford. I came to Washington
8 to work for Congressman Wilbur Mills so when the
9 President would come home, he would come through
10 Washington and he stopped to see all of us he knew.
11 I did not meet Hillary until she moved to Arkansas
12 and I'm not sure I met Hillary until after she
13 married the President.

14 Q When you were living in Arkansas, were you
15 friendly with the Clintons?

16 A In terms of being friendly with the
17 Clintons --

18 Q Socially friendly.

19 A Socially, if you mean did I go to their
20 house and have lunch or dinner or did I go out to
21 dinner with them often, the answer to that is no. I
22 can tell you that one time in my life I've had lunch

1 with Hillary Clinton. And it was at a time when my
2 mother was very ill with breast cancer and she knew I
3 was down and someone told her that, and she called me
4 and we had lunch together.

5 Other than that, I've never had a social
6 luncheon with either she or the President that there
7 weren't another 50, 60, 100, 200, 300 people there.
8 I was appointed to the Highway Commission in Arkansas
9 by David Pryor, not by Bill Clinton, so I was not
10 Bill Clinton's person on the Highway Commission and
11 in fact, his views on subjects usually diverged from
12 my views on the subject.

13 Q Did you do any work, of either an
14 officially appointed nature or an unofficially
15 appointed nature, for Mr. Clinton when he was
16 governor?

17 A In an official capacity, I'm sure that when
18 people asked me my personal opinion about Bill
19 Clinton, whether he was a good governor or not, I
20 would tell them that yes, he was a good governor even
21 though I didn't agree with him on all issues. Yes, I
22 told people it would be good for Arkansas to reelect

1 him. That was an unofficial capacity, I did that on
2 my own, but as far as working on the President's
3 campaign either when he was running for governor or
4 running for President, I did not have an active role
5 in that campaign.

6 Q What about having official positions in the
7 Arkansas state government, be they paid positions or
8 unpaid positions?

9 A The only position I ever had in Arkansas
10 state government was being a member of the Arkansas
11 Highway Commission and I was appointed in 1977 by the
12 then Governor David Pryor. And I was appointed to
13 serve a 10-year term and I served that 10-year term.
14 I went off in January of 1987.

15 Q And you didn't work on Governor Clinton's
16 campaigns for election or reelection?

17 A No, I did not.

18 Q When did you first meet Vincent Foster?

19 A Everybody always asks that question and I'm
20 not really sure when I first met Vince. Vince's
21 sister is married to Beryl Anthony. Beryl Anthony is
22 a member of Congress from the Fourth Congressional

30

1 District. That's my home Congressional district.
2 That's where I was born and raised.

3 As a result of that, if there were events
4 that would happen in the Fourth Congressional
5 District that would be in honor of or something that
6 Beryl Anthony would give for his friends, I would be
7 invited because of my membership on the Highway
8 Commission.

9 And I met Vince Foster at one of those
10 events but I can't tell you whether it was in Hot
11 Springs or it was in Little Rock or where that
12 happened. It could have been El Dorado but probably
13 Hot Springs or Little Rock.

14 Q In the period before you came to
15 Washington, did you have much contact with
16 Mr. Foster?

17 A No, I did not.

18 Q Did the Rose Law Firm do any work for the
19 Lassiter businesses either at the holding company
20 level or the subsidiary level?

21 A They might have done a little work on a
22 consulting kind of basis at one time for

1 Mr. Lassiter. There was a particular lawyer that
2 Mr. Lassiter liked in the firm whose name was Kenny
3 Sheman, and from time to time Dan would call Kenny
4 and ask him for personal advice. Did they handle any
5 of our lawsuits, no.

6 Q When you say "consulting," you mean legal
7 advice consulting?

8 A Yes.

9 Q Anybody besides the lawyer that you
10 mentioned that provided legal advice to
11 Mr. Lassiter's business?

12 A Not to my knowledge.

13 Q Did you ever have any occasion in any other
14 capacity to work with the Rose Law Firm?

15 A I don't recall ever having the Rose Law
16 Firm on my side.

17 Q Were you ever against them in a case in
18 litigation?

19 A I can remember being in their law firm when
20 they were on one side and we were on an opposite
21 side, yes.

22 Q When you say "we" --

1 A It was the Lassiter Company.

2 Q Do you remember what instance that was?

3 A It was an Emerald Isle case and it was a
4 bankruptcy case that we were peripherally involved
5 in. And there were other lawyers there, but the Rose
6 Firm had somebody there for somebody. And there were
7 a number of parties to it, but I remember essentially
8 we weren't on the same side as the Rose Firm.

9 Q When was this case?

10 A '84, '85.

11 Q So this was around -- this was before you
12 took out that loan that you testified about
13 previously from Madison Guaranty?

14 A I would say it was before, yes.

15 Q And I take it that this representation by
16 the Rose Law Firm had nothing to do with that loan
17 from Madison Guaranty?

18 A Had nothing to do with that.

19 Q Now, when you came to the White House in
20 March of 1993, did you have occasion to work with
21 Mr. Foster?

22 A We worked together on occasion as it

1 related to the White House travel office.

2 Q And what in particular was the work that
3 you did in connection with that?

4 A In connection with that, the White House
5 staff in the office of management and administration
6 had been reviewing every office under its purview to
7 make sure its operations were what we wanted them to
8 be and to make sure they operated in a manner that we
9 thought was effective for the Clinton
10 Administration.

11 And one of the offices we had not done was
12 the White House travel office and we were working to
13 evaluate the White House travel office and its
14 function and its ability to function. When we got to
15 that particular office, it was so different than
16 every other office that we had looked at because we'd
17 already looked at the office of administration and
18 we'd looked at various offices within the White
19 House, but the White House travel office was the only
20 one that handled cash every day. None of the other
21 offices handled cash on a daily basis because of the
22 nature of their work.

34

1 We didn't have on staff at the White House
2 accountants, numbers guys, bean counters, auditor
3 types. And as a result of that, we opted to hire
4 someone from the outside to come in to help with that
5 particular part of the review of the travel office.
6 We felt we had the talent and capability in-house to
7 look at the management side and how the office was
8 being managed, but we didn't have in-house talent to
9 review the numbers and to do an audit of the dollars
10 and cents that were there.

11 We talked among David Watkins and Vince and
12 myself, and we agreed that it would be a better idea
13 to get someone from the outside than someone from the
14 inside who might not be as credible, who might have
15 done the work fine but might not be as credible
16 because they didn't have CPA behind their name, so we
17 would hire an outside firm.

18 That discussion, I believe, took place
19 among the three of us. And then we hired a
20 particular firm who had some experience in
21 government, and because they had that experience with
22 government and RIGO, we determined that would be a

1 good firm for us to do.

2 Q Government and?

3 A Reinventing government.

4 MR. BEN-VENISTE: RICO means something else
5 that criminal lawyers know.

6 THE WITNESS: This is reinventing
7 government. Then the auditors came in and I took
8 them to their work space every day and they would
9 report back to me as to their progress and then I
10 would report to Vince if he were around. If Vince
11 weren't around, I would report to Bill Kennedy
12 information that they were turning up along the way.

13 BY MR. CHERTOFF:

14 Q As a consequence of the information they
15 turned up, did there come a point in time when you or
16 Mr. Foster or Mr. Kennedy wound up in contact with
17 the FBI?

18 A Someone was in contact with the FBI, yes.

19 Q How did that happen?

20 A Well, they had turned up, fairly early in
21 the investigation, that there was a lot of missing
22 dollars, somewhere between 15- and \$18,000 missing

36

1 and unaccounted for in the petty cash. As a result
2 of that, that's a large sum of money particularly
3 when the White House is acting in a fiduciary
4 responsibility for the White House press corps, for
5 that money to be missing.

6 And at that point we knew that we had to
7 do -- we had to alert some authority about this
8 missing money, that we couldn't just put our head
9 under our shoulder and wish it would go away.
10 Someone had to be alerted. So we talked about it and
11 I was not in all those meetings, but I know
12 subsequent to that, the FBI was called because in
13 Little Rock, we would have called the prosecutor's
14 office and said look, guys, we've got a problem.
15 Tell us what we need to do.

16 In Washington it's a little harder to know
17 this and this is the White House and because we had
18 had ongoing relationships with the FBI on a
19 day-to-day process with the vetting process at the
20 White House, I think that's why -- I'm sure that's
21 why Bill Kennedy talked to the FBI, to talk to them
22 about it.

1 Q It was Mr. Kennedy's decision to call the
2 FBI?

3 A I don't know if it was singularly
4 Mr. Kennedy's decision.

5 Q Were you part of the group that was dealing
6 with this issue?

7 A I was part of the group that was dealing
8 with how much money was missing. I was not part of
9 the group that was making the decision about who to
10 call.

11 Q At this point in time, was there a
12 substitute for the company or agency that was
13 handling the money in the travel office? Was there a
14 change in the identity of the people who would be
15 handling the travel out of the White House?

16 A Not at that point.

17 Q Did there come a point where there was a
18 change?

19 A Yes, there was.

20 Q When was that?

21 A It was the next week after the members of
22 the travel office had been terminated. We had a firm

1 that volunteered to come in and help us get through
2 some period of time until we could let a contract to
3 either do it through contract and have the work done
4 by contractor, or we could make a determination on
5 who we want to run that office on an ongoing basis.

6 Q What was that firm?

7 A Slips my mind. Worldwide Travel.

8 Q Where was the firm located?

9 A Little Rock.

10 Q Who were the principals of the firm, people
11 who ran the firm?

12 A I can't tell you that. I don't know.

13 Q Do you know any of them?

14 A No, I don't.

15 Q Was there anybody in particular who
16 volunteered the firm to handle the travel?

17 A I don't know the answer to that.

18 Q Was there anybody who's related to the
19 President who was involved with the firm?

20 A Not to my knowledge.

21 Q Was there anybody who's friendly with the
22 President who was part of that firm?

1 A Well, the firm had worked in the campaign
2 and provided travel services through the campaign, so
3 I'm sure that all the people who were in the campaign
4 knew the travel agency, knew the travel agents and
5 the people.

6 I didn't work in the campaign so I don't
7 really know those travel agency people. I'm sure
8 I've heard their names in the past. I just don't
9 recall them.

10 Q You don't remember the name of the travel
11 agency people?

12 A No, I don't remember.

13 Q When you say they volunteered, they
14 obviously volunteered with the notion they'd be paid?

15 A I don't know that that's the truth. I
16 don't know that that is absolutely true. I think
17 they knew that we had a problem. They were
18 interested in helping the President, and they came
19 and they would have taken -- they would have helped
20 the President, notwithstanding whether or not they
21 got paid or not. When a travel agent writes tickets,
22 he gets paid for each one of those tickets so they

40

1 would have been paid on tickets potentially, yes.

2 Q Was there a woman named Cornelius who's
3 employed at the White House?

4 A Catherine Cornelius was an employee of the
5 White House.

6 Q Did she deal with this issue, this travel
7 issue?

8 A She, at that time, was working in the White
9 House travel office, yes.

10 Q Was she involved in arranging for Worldwide
11 Travel to perform the service?

12 A I can't answer that question, no.

13 Q Did there come a point in time when there
14 was a certain amount of controversy concerning the
15 fact that the FBI had been called in on this issue
16 with the travel office?

17 A I read that in the paper, yes, sir.

18 Q Was there discussion in the White House
19 about the controversy?

20 A There was not controversy that I was in
21 conversations with that discussed that controversy,
22 no.

1 Q Did you hear the term "Travelgate"?

2 A From the press, yes.

3 Q Was the fact that the press was raising an
4 issue about Travelgate discussed in the White House
5 in your presence?

6 A I'm not sure that I wasn't present when we
7 talked about Travelgate in the fashion of talking
8 about it being a scandal or anything. We talked
9 about the travel office every day and how to make
10 sure it was working appropriately and making sure
11 that the planes that we were chartering were up to
12 the level that the press required, the food -- when
13 we talked about travel at the White House, we talked
14 about operations of the White House travel office.

15 We didn't have time then, nor do we have
16 time now to spend a lot of time talking about
17 Travelgate or any other -- all the other stuff that
18 might or might not be in the paper. Our discussions
19 daily at that point were how do we make sure that
20 travel office works appropriately, we get the press
21 where they need to be with the President, and when
22 they get there, they are, in fact, satisfied.

1 Q Were you present for discussions in the
2 White House concerning questions that had been raised
3 about the fact that the FBI was being brought in to
4 do an examination of this travel office?

5 A I knew that the FBI came in to do an
6 investigation and took documents from the White House
7 travel office to use and to review for their
8 investigation.

9 Q Was there a question about whether or not
10 Mr. Kennedy was the proper person to order that to
11 happen?

12 A I don't know whether Mr. Kennedy, in fact,
13 ordered that to happen or not. I have no knowledge
14 of that.

15 Q Do you remember whether there was
16 discussion about how the FBI was invited in?

17 A There was discussion about that, yes, and
18 there was information in the press with regard to
19 that.

20 Q Who's participating in the discussion in
21 the White House on that subject?

22 A I was not participating in that discussion,

1 so I don't know who was in that discussion.

2 Q Did you hear who the people were who were
3 discussing that issue?

4 A I didn't have a need to know and nobody
5 told me that.

6 Q So you weren't interested?

7 A No. There are some things you just don't
8 need to know. I learned very early that there are
9 some things that you don't ask questions about.

10 Q How did you learn that?

11 A When I was about 20.

12 Q Is that a consequence of your work
13 experience, too?

14 A I think that's back when I was working for
15 Congressman Mills.

16 Q Let me direct your attention to July 20th.
17 Were you out to dinner that night?

18 A Yes, I was.

19 Q Do you remember where?

20 A Sequoia in Georgetown on the river.

21 Q When did you first learn a body that may
22 have been Vincent Foster's was found at Fort Marcy

1 Park?

2 A After I had dinner at Sequoia, my pager
3 went off. When I went in -- the pager said call
4 David Watkins through the White House switchboard, I
5 called the switchboard and asked to talk to
6 Mr. Watkins and she said give me your number. He
7 wants to call you back. I said I'm at a pay phone.
8 Why don't you just let me hold, so I held until she
9 could get Mr. Watkins back on the telephone for me.
10 And Mr. Watkins told me at that point in time that
11 Vince Foster had killed himself, and I said you got
12 to be kidding me. What did you say? What did you
13 just say? Patsy, Vince has killed himself, and I
14 said what can I do? Can I come where you are? What
15 do you want me to do? He said we want you to go to
16 the White House and see if Vince left a suicide note.

17 Q He said we want you to go to the White
18 House. Whom did you understand him to mean by "we"?

19 A At that point I didn't pursue who the we
20 was. I just said I'll do it. He said call me
21 back -- page me back and let me know after you've
22 been there and I'll call you back.

1 Q Did you know where he was at that point?

2 A He was at Vince's house at that point.

3 Q So what did you do?

4 A I went back outside. I told my friends
5 what had happened who knew Vince and they were as
6 crushed and as shocked as I was. And they said come
7 on, we'll go back to the White House with you and I
8 said let's get a cab and you-all can drop me off at
9 the White House, but I can't get you into the White
10 House at this hour because you have to go through the
11 clearance process. So we all went in the same cab
12 and they dropped me at the northwest staff gate and I
13 went back into the complex at that point.

14 Q And what did you do?

15 A I went into the lower west wing of the
16 White House, unsecured my office --

17 Q Where was your office?

18 A My office was in the lower west wing on the
19 left-hand side just past the men's room, if you're
20 familiar with the lower west wing.

21 Q Can you tell us what was the office
22 directly above your office on the first floor?

1 A Oh, gosh, I have no earthly idea who was
2 above me. I don't know. Part of the lobby, I guess,
3 would be over me, over where I was and potentially
4 part of the National Security Council could be over
5 where I was.

6 Q What did you have to do to unsecure your
7 office?

8 A I had to unlock the door and turn off the
9 alarm and call the control center and tell them that
10 I was in my office again.

11 Q And then what did you do?

12 A Put my things down, my purse down and
13 walked upstairs to the first floor to see what was
14 going on and to tell them that I had been asked to go
15 look for a note.

16 Q Who did you go to see?

17 A I saw in the hallway Bruce Lindsey. I saw
18 Dana Lawrence. I saw John Emerson, and I saw Bernie
19 Nussbaum. And I told Bernie, I said Bernie, David
20 Watkins wants me to go look and see if Vince left a
21 note. So we went upstairs together, went into
22 Vince's office. As we went to Vince's office, the

1 cleaning lady was coming out of Vince's office and I
2 went behind Vince's desk and sat down at his desk and
3 looked at the surfaces of his desk and the other
4 pieces of furniture in the room to see if there was
5 anything apparent.

6 I opened his desk drawers and looked in the
7 top of each one of his desk drawers. There was a
8 briefcase sitting on the floor beside the desk, had a
9 fold-over top. I opened the fold. There wasn't
10 anything in there. During this period of time that I
11 was looking around, Bernie is walking around, pacing
12 around, very nervous in terms of just distraught. I
13 would just describe him as distraught, tears in his
14 eyes and he walked out of the room, and Maggie
15 Williams came in the room, and she sat down either on
16 the sofa or the chair directly across from the desk
17 from me. And we sat there and talked and cried for
18 five or six minutes probably, and talked about Vince
19 and how much we'd miss Vince, probably even expressed
20 our anger at Vince for taking himself away from us
21 when we thought we needed him so much.

22 Maggie got up and left. Bernie came back

1 in, still pacing around and he said we probably don't
2 need to be in here. I said well, there's no note in
3 here so let's go, Bernie. So we both walked out of
4 there together.

5 Q What did you do?

6 A Walked back down to the first floor.

7 Q Where?

8 A Walked through the first floor, went back
9 to my office on the ground level of the west wing and
10 paged David Watkins from there to call me back and I
11 paged him once. And I don't recall now, although
12 I've looked at the paging records that were supplied
13 to the Committee, and it looks like I then turned
14 around and paged him a second time because I probably
15 didn't get an answer to the first page. And he
16 called back.

17 I told him that I had found nothing
18 whatsoever, and he asked me -- I asked him if I could
19 do anything else, and he said will you see that a
20 copy of the press release with regard to Vince is
21 sent to the house, get a carpet car and bring it over
22 here. Went back to the first floor to see if they

1 were through with the press release, and when they
2 were through with the press release, I made copies of
3 it, put it in an envelope, called a carpet car, they
4 came and picked it up.

5 I determined on my own that it was a little
6 too cold to just send this press release on the house
7 on its own and I rode in the carpet car to Vince's
8 house and delivered the press release and went in. I
9 spoke to Sheila and Beryl and to David Watkins, of
10 course, and Eileen and stayed just for a very, very
11 few minutes and then I left.

12 In the carpet car, I asked him how he was
13 going back to the garage and he told me which route
14 he was taking back to the garage. And I said I want
15 to get out at a specific corner, so he let me out at
16 that corner and I walked another two blocks to get
17 home.

18 Q Now, I want to just identify your movements
19 within the White House. You came into the White
20 House. You went directly up to your office;
21 correct? You opened your office. You indicated to
22 the guard you were there for purposes of notifying

50

1 him to turn off the alarm, and then you went
2 immediately to the first floor; right?

3 A Right.

4 Q You looked to see what people were doing?

5 A I wanted to see what else was there. I
6 wanted to share my grief.

7 Q What office did you go into?

8 A I don't know that I went into any office.

9 Q Did you immediately see Mr. Lindsey and
10 Dana Lawrence and Mr. Nussbaum and Mr. Emerson?

11 A Dana and John and Bruce were outside in the
12 hallway, outside of where Bruce's office was between
13 the Oval Office and the Chief of Staff's office.

14 Q So you saw them as soon as you came up the
15 stairs basically or up the elevator; right?

16 A I don't know whether I came on the elevator
17 or whether I came on the stairs, but if I came by the
18 elevator, then I would have turned right to go down
19 that hall and I would have pretty much immediately
20 have seen them.

21 Q Who is Dana Lawrence?

22 A She worked at the White House at that time

1 and now she worked for the Small Business
2 Administration.

3 Q In what capacity?

4 A I don't know what her title is at the Small
5 Business Administration. In the White House she was
6 in presidential personnel.

7 Q And John Emerson, what was his job?

8 A Deputy assistant to the President for
9 presidential personnel.

10 Q And you went up to the assembled people and
11 you said to them that Mr. Watkins had asked you to
12 look for a note?

13 A Well, that's not the first thing that came
14 out of my mouth.

15 Q What was the discussion?

16 A We had a discussion about Vince. We all
17 hugged each other, and we all were in tears and we
18 were all very distraught about what Vince had done to
19 himself. And we were all standing there just really
20 grieving among ourselves, and Bernie walked up and I
21 said oh, Bernie, David wants to be sure, let's see if
22 there's a note of -- a suicide note, did Vince leave

52

1 a suicide note in his office because we wanted to
2 make sure that Lisa gets to see that note before the
3 world reads the note.

4 Q So Bernie Nussbaum was not there when you
5 first came up?

6 A No.

7 Q He came along later, couple moments later
8 maybe?

9 A I don't know.

10 Q But you were on your way up to the
11 counsel's office; right?

12 A I was going there, yes, that was my end --
13 the end of my route would have been there.

14 Q How were you going to get in?

15 A I never had thought about that. I don't
16 know.

17 Q Did you have a key?

18 A No, I did not.

19 Q On your way up, did you talk to one of the
20 Secret Service guards and ask him to provide you with
21 a key?

22 A No, I did not. I don't recall asking

1 anybody to provide me with a key.

2 Q So you went up, but you had no notion of
3 how you were actually going to get into the office?

4 A That's right.

5 Q And you understood the office was locked?

6 A No, I didn't even think about it being
7 locked.

8 Q Your office was locked?

9 A Yes, but I always locked my office. A lot
10 of people don't lock their offices because it's in
11 the west wing and it's safe. There are Secret
12 Service people everywhere.

13 Q And you understood the office was alarmed;
14 right?

15 A I didn't know whether Vince's office was
16 alarmed or not.

17 Q Your office was alarmed?

18 A That didn't mean they were all alarmed,
19 sir.

20 Q Is there a reason why your office was
21 alarmed and offices of other senior members of the
22 White House were not alarmed?

1 A There's no rhyme or reason that some
2 offices within the White House and Old EOB are
3 alarmed or not alarmed. Some offices that I think
4 definitely should be alarmed are not alarmed and
5 other offices that I have no knowledge of why they
6 would be alarmed are alarmed and you're going, this
7 makes no sense whatsoever. So I didn't know at that
8 point whether those offices were alarmed or whether
9 they weren't alarmed.

10 Q Mr. Watkins, had he indicated to you on the
11 phone any concern about having the office sealed?

12 A He had not discussed sealing the office
13 with me.

14 Q When you were discussing -- when you were
15 talking to Mr. Lindsey and Dana Lawrence and John
16 Emerson the subject of keeping the office sealed
17 didn't come up?

18 A No, we were talking about our emotions.

19 Q When Mr. Nussbaum came along, you said to
20 him oh, David Watkins asked me to go up and look for
21 a note; correct?

22 A I'm not sure -- I said Bernie, David wants

1 us to be sure there's no note in Vince's office.

2 Would you go up with me and he came with me.

3 Q And so the two of you went up to the
4 counsel's suite; correct?

5 A Correct.

6 Q As you were at the counsel's suite, there
7 was a cleaning person that was working in the area of
8 counsel's suite?

9 A There was a cleaning person coming out of
10 Vince's office.

11 Q Coming out of Mr. Foster's office?

12 A Right.

13 Q One or two cleaning people?

14 A I don't know whether there was another
15 cleaning person. I remember one coming out of the
16 office.

17 Q Were the lights on in the suite?

18 A The lights were on in the suite.

19 Q Not just in Mr. Foster's office?

20 A That's right.

21 Q Was there a uniformed Secret Service guard
22 there?

1 A I don't remember one being there.

2 Q You and Mr. Nussbaum walked right in?

3 A Correct.

4 Q And you walked into Mr. Foster's office?

5 A Correct.

6 Q And Mr. Nussbaum went along with you?

7 A Correct.

8 Q So you were not there before Mr. Nussbaum
9 came in?

10 A No. I mean I went into the office. He was
11 behind me. There might have been a second or two
12 before he came in --

13 Q But you basically came in together?

14 A Basically we came in together.

15 Q On your way up, did you talk about where it
16 might be a good idea to look for this note?

17 A I don't remember having any conversation
18 with Bernie on the way up the stairs.

19 Q And you didn't discuss with him any
20 requests to have the office sealed or locked?

21 A There was no discussion between us about
22 that, no.

1 Q By the way, did he make any calls to
2 indicate to the officers, in terms of the alarm or
3 arming or disarming the alarm, that he was going to
4 be present in the room?

5 A Not to my knowledge.

6 Q And did he look at anything or look in any
7 places while you were looking on the desk?

8 A He was just pacing back and forth, back and
9 forth, back and forth. He was just distraught about
10 this whole thing. I don't think I could tell you
11 that Bernie was looking for a note at all.

12 Q About how long were you in there together
13 with Mr. Nussbaum before he walked out?

14 A I have no sense of the timing in there. I
15 would tell you that the whole time that I was in
16 Vince's office from the time Bernie and I went in
17 until the time Bernie and I left was probably less
18 than 10 minutes, and that would include the time I
19 was in there with Maggie.

20 Q Well, now, we'll get to your departure in a
21 second. You're telling us the entire period of time
22 you were in there was 10 minutes?

58

1 A I don't think it was any more than that.
2 It was a very short period.

3 Q During the period of time, within that 10
4 minutes when you first came in, Mr. Nussbaum was with
5 you; right?

6 A Correct.

7 Q Then he leaves?

8 A Correct.

9 Q Do you know where he goes?

10 A I have no idea.

11 Q When he walked out, were the lights in the
12 rest of the suite off?

13 A I don't think the lights -- I don't know
14 whether the lights were off or not. I don't remember
15 noticing that any lights were off.

16 Q And then you were there and Ms. Williams
17 came in?

18 A Right.

19 Q She sat down on the couch?

20 A Whatever that piece of furniture was. I
21 don't remember if it was a sofa or whether it was a
22 lounge chair.

1 Q And she was there for how long?

2 A As I said, this whole time frame, I don't
3 think took more than 10 minutes, so Maggie was there
4 maybe five minutes.

5 Q And then she left and was Mr. Nussbaum in
6 the room when she was there?

7 A No, Mr. Nussbaum came back in after Maggie
8 left.

9 Q So he was not there while she was there?

10 A No, he was not.

11 Q She was out of the room before he came back
12 in?

13 A Correct.

14 Q You're quite positive about that?

15 A I think that's true.

16 Q And at this point in time, had you seen a
17 uniformed Secret Service guard?

18 A I don't remember seeing him.

19 Q Mr. Nussbaum came in and then what did he
20 do?

21 A He said I don't think we were going to find
22 anything, Patsy, and I think we ought to get out of

1 here.

2 Q Did he say why he said that?

3 A No.

4 Q Didn't give you a reason?

5 A No.

6 Q And when you left, how did he secure the
7 office?

8 A I walked out ahead of Bernie and I don't
9 know how he secured the office.

10 Q You walked out ahead of Bernie?

11 A Yes.

12 Q Did he tell you to wait while he locked up
13 or made a call?

14 A No, not that I recall.

15 Q Did you hear him make a telephone call to
16 indicate that the alarm should be put back on?

17 A Not that I recall.

18 Q And your entire period of time in that
19 office suite was 10 minutes?

20 A I don't think it was any more than that.
21 That's a real push on my remembering, but I don't
22 think we were in there any more than 10 minutes.

1 Q Were you any place within the White House
2 counsel's suite but in Mr. Foster's office?

3 A Well, to get into Mr. Foster's office, you
4 have to be in the outside suite.

5 Q Did you -- other than crossing in through
6 it to get to Mr. Foster's office or crossing it to
7 get out of Mr. Foster's office, did you spend any
8 time in and around the outside office?

9 A I don't recall having done that, no.

10 Q And you were not in Mr. Nussbaum's office?

11 A No, I was not.

12 Q Again, your best estimate is your entire
13 time in this suite is approximately 10 minutes;
14 right?

15 A Right.

16 Q And then you and Mr. Nussbaum go where?

17 A I go back downstairs.

18 Q To your office?

19 A Yes.

20 Q And then what do you do?

21 A I paged David.

22 Q And after you paged David, you waited a

1 couple moments and paged him again?

2 A I don't know how long I waited before I
3 paged him a second time. I'm sure I was pretty
4 impatient at that hour of the night.

5 Q Would you say you probably paged him
6 certainly within 15 minutes between the first page
7 and the second page?

8 A I don't recall, and I'd have to look at
9 that pager record to tell you specifically how long
10 it was I waited.

11 Q And the second page, did you leave him a
12 little message saying re: Vince's office?

13 A Yes, I did.

14 Q And you went directly from the White House
15 counsel's office into your own office to page David
16 Watkins?

17 A I went from the counsel's office back to my
18 own office. Now, what that route was, whether it was
19 direct or whether it was circuitous, I don't
20 remember.

21 Q But you didn't stop anyplace?

22 A I don't remember.

1 Q Do you think you stopped someplace?

2 A I don't remember.

3 Q At the point you left the office, it was in
4 your mind to let Mr. Watkins know that you hadn't
5 found the note?

6 A That's correct.

7 Q Because you knew it was a matter of concern
8 to Mr. Watkins whether, in fact, there was a note;
9 correct?

10 A Yes.

11 Q So you had no reason to stop and do
12 something other than getting directly to an office
13 where you could page Mr. Watkins?

14 A But the only difference, if I might differ,
15 is to say if I walked in or ran into someone who I
16 knew was distressed or disturbed about Vince's death,
17 I certainly would have stopped to let them comfort me
18 and for me to comfort them. Whether I ran into
19 anyone along the way that I met up with before I went
20 to my office, I don't really recall.

21 Q You don't recall spending any substantial
22 period of time with someone before you went to your

1 office?

2 A I don't even remember whether I saw anybody
3 or not.

4 Q Certainly no substantial conversation
5 occurred between the time you left the counsel's
6 suite and the time you got to your office. Is that
7 fair to say?

8 A It's fair to say that I do not recall
9 having met with anybody. I don't recall being
10 delayed by anybody on my way down there, and I
11 remember paging David twice.

12 Q And during the period of time between the
13 first page to David Watkins and the second, were you
14 still in your office?

15 A I had to be in my office to receive the
16 call, yes.

17 Q So you would have clearly been in that --
18 you would not have left that office during the period
19 of time between the first page and the second page;
20 correct?

21 A I would not have left my office.

22 Q And it's the second page that led to him

1 responding by telephone and you having the
2 conversation with him; right?

3 A It was the second page that -- he answered
4 only after the second page.

5 Q And you went up and got the press release?

6 A Went upstairs to the first floor, got the
7 press release.

8 Q Copied it?

9 A Copied it.

10 Q And then took it out?

11 A Yes.

12 Q You didn't have occasion to talk to
13 Mr. Watkins after that second page, after he called
14 you in response to the second page -- I mean by
15 telephone?

16 A I don't recall whether I talked to David
17 again or not.

18 Q You certainly didn't page him?

19 A I certainly didn't page him. I don't know
20 whether I talked to him.

21 Q Did you make any other calls that evening
22 when you were in the White House?

1 A I don't recall specifically whether I
2 called from the White House or not. I think I called
3 my friend Lyda who had dropped me back at the White
4 House. She was very concerned about me. She was
5 very concerned about this whole process. She was
6 concerned about Vince's family and I think I called
7 Lyda to report to her that I was okay and I was going
8 to take the press release to Vince's family and I
9 would be fine, and that I would call her when I got
10 home so she would know I was home safe.

11 Q She lives in Washington?

12 A Oh, no, she lives in Little Rock.

13 Q But she was staying in Washington?

14 A Yes, she was staying in some hotel here.

15 Q In Washington?

16 A Yes.

17 (Recess.)

18 BY MR. CHERTOFF:

19 Q Was there anybody else that you called
20 besides Lyda while you were at the White House?

21 A I don't recall calling anybody else.

22 Q Do you have a cellular phone?

1 A I didn't have one then.
2 Q Do you have one now?
3 A Yes.
4 Q Did you have use of cellular phone?
5 A No.
6 Q Was there one assigned to you?
7 A Not back in 1993.
8 Q You had no cellular phone with you that
9 evening?
10 A No, I did not.
11 Q Was there one registered in your name?
12 A In '93?
13 Q Yes.
14 A No, there was not.
15 Q Are you familiar with the number 757-5000?
16 A Yes.
17 Q For?
18 A It's the White House communications agency
19 signal switchboard.
20 Q 690-5022, does that mean anything to you?
21 A I don't know, I have no idea.
22 Q Do you know a Michael Lufrano?

1 A Yes, I do.
2 Q Who is Michael Lufrano?
3 A He is head of scheduling in advance.
4 Q Did you have occasion to talk to him that
5 evening?
6 A I don't remember talking to Michael Lufrano
7 that evening.
8 Q Did he page you?
9 A Lufrano could have paged me earlier that
10 evening.
11 Q Did he page you twice that evening?
12 A I don't know.
13 Q Did he page you while you were at the White
14 House?
15 A Late that night?
16 Q After 10:00.
17 A I don't recall him paging me at the White
18 House, no.
19 Q Do you recall him paging you at the White
20 House with a White House number?
21 A I don't recall him paging me that night.
22 Q Did you try to reach Webster Hubbell that

1 evening?

2 A No, I did not.

3 Q Are you familiar with a number in Michigan,
4 843-8158?

5 A I don't even know anybody in Michigan.

6 MR. BEN-VENISTE: Off the record.

7 (Discussion off the record.)

8 BY MR. CHERTOFF:

9 Q Who did you get your cellular phone from?
10 Did you take a cellular phone over from somebody
11 else?

12 A I was issued a cellular phone in the summer
13 of 1994 after Mr. Watkins left the White House.

14 Q So it was Mr. Watkins who had the phone
15 that you ultimately got?

16 A I don't know who had the phone before me.
17 I have no earthly idea. I know I was issued one by
18 the White House communications agency.

19 Q Did you have access to the safe -- any of
20 the safes in the White House counsel's suite? Did
21 you know the combination?

22 A No, I don't know the combination to any

70

1 safe.

2 Q That wasn't part of your job duties?

3 A Safes -- the maintenance of safes and the
4 care of safes are the responsibility of the office of
5 administration, and I found that out after the
6 New York Post story in the spring of '94 because the
7 New York Post wrote that, that I had responsibility
8 for safes. And as a result of that, I called the man
9 who heads the security office for the office of
10 administration and I asked him if we had
11 responsibility for safes, and he said yeah, we do. I
12 went oh, I never knew that and he said well, if it's
13 not broken, Patsy, you don't have to fix it. Safes
14 are pretty standard the way we operate it. I
15 wouldn't worry about safes.

16 I said are there safes in the White House
17 counsel's office, and he said let me look at my
18 records. And he looked at his records and he told me
19 there were two safes in the White House counsel's
20 office. I went over and looked at them and yes,
21 there are two safes there.

22 Q Now, are you confident that you didn't

1 spend as much as 45 minutes in the White House
2 counsel's suite?

3 A I don't think I spent that much time there,
4 no.

5 Q Is it possible?

6 A I don't think it was possible that I spent
7 45 minutes there.

8 Q How about 30 minutes?

9 A I don't know.

10 Q So it is possible you spent 30 minutes
11 there?

12 A It only felt like a very short period of
13 time that I spent there, but when somebody is crying
14 and you're talking to them, and sometimes, I would
15 say that time gets away from you but I would tell you
16 it seems a very, very short period of time I was in
17 there.

18 Q But you're not comfortable telling us that
19 you spent less than 30 minutes there; it's possible
20 you did spend as much as 30 minutes there?

21 A I'm telling you that I thought I spent
22 about 10 minutes there. Is it possible I was there

1 longer than 10 minutes? Yes. Is it possible I was
2 there less than 10 minutes? Yes.

3 Q Is it possible you were there as long as 30
4 minutes?

5 A I don't know how long I was there. I have
6 no earthly idea. I just know it seemed like a very
7 short period of time.

8 Q Can you give us an outside time frame in
9 terms of the amount of time you were in that suite?

10 A Well, if you tell me what time the page
11 went on when David Watkins paged me.

12 Q If I told you that was -- when he first
13 paged you?

14 A When he first paged me.

15 Q That was approximately 10:00 in the
16 evening.

17 A 10:00 or 10:00, later than that?

18 Q I think I have 10:00.

19 A I thought it was 10:34. I just want to
20 make sure.

21 Q Well, there is a page at 10:34.

22 A And it says have Patsy Thomasson, call the

1 White House switchboard or something like that?
2 Q Let's go over it. You were in the
3 restaurant when you were first paged by Mr. Watkins?
4 A I was out of the restaurant when I was
5 paged by Mr. Watkins.
6 Q You were leaving the restaurant?
7 A I was leaving the restaurant.
8 Q Going where?
9 A Going to catch a cab.
10 Q And you went back into the restaurant to
11 respond to the page?
12 A That's correct.
13 Q I don't want to testify for you. Let me
14 ask you this about your recollection --
15 MR. BEN-VENISTE: She asked you in
16 fairness -- you've indicated what the timing was --
17 MR. CHERTOFF: I have an indication that
18 there was a page at approximately 10:00, a first page
19 at 10:00 and a second page at 10:34.
20 MR. IVEY: What document are you with?
21 MR. CHERTOFF: I'm working off of a
22 document that's a compilation we've prepared from

1 some other records, so I can't give you direct
2 documents.
3 MR. BEN-VENISTE: That's not
4 cross-reference?
5 MR. CHERTOFF: I don't want to testify.
6 BY MR. CHERTOFF:
7 Q Did you get paged once or twice?
8 A I only recall being paged once.
9 Q Let's assume you got paged at 10:34. Does
10 that help you --
11 A If I got paged at 10:34, the sequence of
12 events would be there. When I got paged and I looked
13 at the pager, it was 10:34. I called the White House
14 operator. I said you-all go ahead, get a cab, go
15 back to the hotel. I'll go in and answer my page.
16 They said no, we'll wait for you, Patsy. So I went
17 into Sequoia, back into Sequoia, I had to inquire
18 where to find the telephone. I found the telephone,
19 called the White House switchboard.
20 I was left on hold until she could get
21 through either -- and I don't know how she reached
22 Mr. Watkins, whether she paged him or whether she

1 constantly called the number at Mr. Foster's house in
2 order to get ahold of Mr. Watkins but a period of
3 time, at least five minutes, passed before I got to
4 talk to him.

5 So 10:34, it's got to be 10:40-ish before I
6 ever get through, so we're on the phone for three or
7 four minutes talking about Vince and talking about
8 what's happened. So let's say it's 10:45 or 10:47
9 when I go back out and talk to my friends. So I talk
10 to them and we stand there and talk about it and we
11 just console each other.

12 So then I leave the area of the fountain
13 down at Washington Harbor and we walk up to get a
14 cab. And I don't recall specifically whether we were
15 able to get a cab down at Washington Harbor or
16 whether we had to walk up to M Street to get a cab,
17 but we got a cab. And then the cab -- and there were
18 eight of us that had to get into the cab so we had to
19 get a cab that was a station wagon. And then the
20 station wagon dropped me at the northwest gate, so
21 there had to be drive time from Georgetown to the
22 White House.

1 So I'm saying it had to be close to 11:00
2 by the time I ever got back to the White House. And
3 then the time that elapsed going in and unsecuring my
4 office and then going to the first floor, chatting
5 with those people on the first floor, then going to
6 Vince's office and then coming back, and then the
7 time that I first paged Mr. Watkins was --

8 Q 11:36.

9 A 11:36, so I don't believe I could have been
10 in Vince's office --

11 Q That's based on you working it out
12 logically?

13 A Yeah, right.

14 Q Not based on your recollection?

15 A No, that's based on working it out
16 logically, knowing what I had to do to get back there
17 and all that.

18 Q And at the time you went up to the office,
19 it was open because there were cleaning people
20 inside; right?

21 A There was a cleaning person inside Vince's
22 office when I went up there.

1 Q And all the lights were on in the suite?
2 A That's correct.
3 Q And at the time you left with Mr. Nussbaum,
4 you don't recall him making a call to close -- to
5 alarm the suite and lock the door?
6 A I don't recall that.
7 Q Did you see Evelyn Lieberman when you were
8 up there?
9 A At the White House that night?
10 Q Yes.
11 A I don't recall seeing Evelyn or not seeing
12 Evelyn.
13 Q Did you see the First Lady's office? Did
14 you go by the First Lady's office?
15 A I didn't go by the First Lady's office.
16 Q It's right next to the counsel's suite; is
17 that correct?
18 A That's correct.
19 Q Did you see a light coming out of the First
20 Lady's office?
21 A I don't recall.
22 Q You didn't look inside the First Lady's

1 office?
2 A I don't recall having done that.
3 Q Were you in the White House the next day?
4 A Yes, I was.
5 Q And were you involved at all in the
6 discussions concerning the securing of Mr. Foster's
7 office?
8 A I don't recall that, but if someone had
9 wanted the Secret Service to secure that office, they
10 would have called the White House office of
11 management and administration to get a Secret Service
12 person to go there because our office was the liaison
13 between the White House and the Secret Service.
14 Q Do you recall such a call being placed?
15 A I don't recall that.
16 Q Did you have any conversations with
17 Mr. Nussbaum the next day?
18 A I don't recall having any conversations
19 with Bernie the next day.
20 Q Did you have any conversations with him
21 regarding the way in which documents in the office
22 would be handled?

1 A I had no conversations with Mr. Nussbaum
2 regarding the way in which documents in the office
3 would be handled.

4 Q Do you recall there were Park Police on the
5 premises on the 21st?

6 A Yes, I do.

7 Q How were you familiar with that?

8 A I don't recall at this time whether the
9 Secret Service told me that the Park Police were
10 there or I was told by someone in the counsel's
11 office that the Park Police were over there that day.

12 Q What were you told about that?

13 A Just that they were there that day, and I'm
14 not sure, but they didn't brief a group of us. I
15 don't recall that.

16 Q Was there a morning briefing on Wednesday
17 morning at approximately 11:00?

18 A I don't recall that, but I do recall there
19 was conversation about the Park Service coming to
20 brief us.

21 Q Were you in Mr. Foster's office at any time
22 on the 21st or 22nd?

1 A No, I was not.

2 Q Did you go to the funeral on the 23rd?

3 A I did not.

4 Q You stayed in Washington?

5 A I did.

6 Q Were you in Mr. Foster's office on the
7 23rd?

8 A No, I was not.

9 Q Do you know if Mr. Foster's office was
10 locked on the 23rd?

11 A I have no earthly idea.

12 Q Do you know if it was secure on the 23rd?

13 A I have no idea.

14 Q Did you have any conversations with
15 Mr. Watkins after the 20th concerning whether the
16 office should have been secured on the 20th?

17 A I don't recall having that conversation.

18 Q Never came up?

19 A I don't recall having that conversation.
20 I'm not saying it didn't happen. I don't recall
21 talking to him about it.

22 Q Did you have any conversations with

1 Mr. Nussbaum after the 20th about whether the office
2 should have been secured?

3 A I had no conversation with Mr. Nussbaum
4 regarding that.

5 Q Do you know whether the office was secured
6 when you and Mr. Nussbaum left on the 20th?

7 A I do not know the answer to that.

8 Q You didn't check to see if it was locked?

9 A I didn't do that.

10 Q You thought that was Mr. Nussbaum's
11 business?

12 A Exactly.

13 Q And Mr. Nussbaum on the 20th, other than
14 the comment to the effect that maybe you should get
15 out of there, made no other comments or had no other
16 discussion concerning securing the office?

17 A Not with me.

18 Q Have you ever had any discussion with
19 anybody at the White House concerning the movement of
20 documents from Mr. Foster's office up to the
21 residence?

22 A I've no discussions with regard to that.

1 Q Have you had any discussions with anyone in
2 the White House concerning the finding of a torn-up
3 note in the briefcase?

4 A I don't recall having conversations with
5 anybody about that torn-up note.

6 Q When did you learn about the torn-up note
7 being found?

8 A I think that torn-up note was found on a
9 weekend that I went home to Arkansas.

10 Q And what weekend was that?

11 A It was in August, and I don't really recall
12 which weekend in August it was, but I went home for a
13 long weekend, maybe went home on a Thursday night and
14 came back on Sunday or Monday, and I think it was
15 found that weekend.

16 Q And your impression is it was found over
17 the weekend?

18 A I just remember having the TV on at home
19 because I have no TV here, and I remember having the
20 TV on at home and seeing that as being a story on CNN
21 or C-Span or something.

22 Q Did you have any conversations with anyone

1 in the White House about that?

2 A I don't recall having any conversations
3 with anyone in the White House about that note.

4 Q Well, on the 20th you were looking for a
5 note; right?

6 A Right.

7 Q So it must have piqued your curiosity to
8 see that a note was found?

9 A It would have piqued my curiosity if it was
10 a suicide note, and I don't think it was a suicide
11 note, sir.

12 Q You formed that --

13 A It doesn't say anything about suicide.

14 Q Your conclusion was based on what the
15 television said, that it was a suicide note?

16 A I don't remember what the television said.
17 The television said something about what the contents
18 are what he liked about Washington and what he didn't
19 like about Washington, and particularly what he
20 didn't like about Washington. I did not -- to my --
21 my thought process, to me that was not a suicide
22 note.

1 Q Did you discuss your perception or your
2 observation about whether the note was a suicide note
3 with anybody else?

4 A I don't recall discussing that with
5 anybody.

6 Q You just -- when you heard what the content
7 of the note was from the television, you essentially
8 were not particularly interested. Is that your
9 testimony?

10 A Of course I was interested in what it said
11 in the note. I'm just saying that I did not think it
12 was a suicide note.

13 Q Did you discuss the note, whether it was a
14 suicide note or not, with anybody at the White House
15 after you learned about it having been found?

16 A I do not recall having discussed that note
17 with anyone at the White House.

18 Q And you didn't talk about it with
19 Mr. Watkins?

20 A I don't recall having talked about it with
21 anyone, sir.

22 Q Is there a reason you didn't want to talk

1 about it with somebody?

2 A I don't know that I thought it served any
3 purpose to talk about it. I just -- there comes a
4 time and a point where you want to put death behind
5 you. It's a very, very sad thing. I didn't want to
6 talk about Vince every day.

7 Q So at the point at which you learned about
8 the note, you're telling us that you basically
9 decided you just wanted to put it behind you?

10 A We tried -- I tried personally to put it
11 behind me from the day it happened.

12 Q You didn't try to put it behind you when
13 you went up to look for the note on the 20th?

14 A That's correct.

15 Q So as of the day after, you started to try
16 to put it behind you?

17 A Exactly.

18 Q Were you involved in any way after the 20th
19 in any discussions concerning the way in which
20 Mr. Foster's documents would be handled or disposed
21 of?

22 A I had no -- there was no one that had any

1 conversation with me whatsoever about how
2 Mr. Foster's documents would be handled.

3 Q My question is a little different. Were
4 you present for or did you learn about any
5 conversations in the White House concerning how
6 Mr. Foster's documents should be handled after the
7 fact after the 20th?

8 A I've not had the benefit of any of those
9 conversations.

10 Q Did you ask Mr. Watkins why he thought
11 there might be a suicide note in the office?

12 MR. BEN-VENISTE: I don't think that's
13 quite a fair characterization of what the testimony
14 is.

15 BY MR. CHERTOFF:

16 Q You said that Mr. Watkins --

17 MR. BEN-VENISTE: As to why he thought
18 there might be --

19 MR. CHERTOFF: I'll withdraw the question.
20 I'll put it this way.

21 BY MR. CHERTOFF:

22 Q He asked you to go look for a suicide note

1 in Vince's office; right?

2 A That's correct.

3 Q Did you ask him why he thought there might
4 be one there?

5 A No. I mean, if Vince committed suicide,
6 which they believed that he did -- and which I
7 believe now that he did. I believe they told me that
8 he did -- it seems to me that was enough reason in
9 itself to look for a suicide note.

10 Q Did he tell you why, given that Mr. Foster
11 was found outside of the office, why he thought you
12 should look in the office?

13 A He didn't give me any reason or logic for
14 that. My cousin committed suicide in October of that
15 year. I looked in his house and I looked in his
16 office for a suicide note because we were so
17 concerned about why he would take his life. Knowing
18 all the time he would be just like Vince, sir, in
19 that those people who take their lives, they don't
20 tell anybody why.

21 Q I don't want to focus on obviously your own
22 personal situation. We're interested only in the

1 state of mind of people as of July 20th through the
2 22nd or 27th of July, and I just wanted to establish
3 that Mr. Watkins -- did Mr. Watkins, after the fact,
4 tell you why he asked you to go in there and look for
5 a note?

6 A I didn't ask him that question. He didn't
7 volunteer that information.

8 Q When you went to the house later that
9 evening or in the early hours of the next day and
10 spoke to Mr. Watkins, did he ask you where you had
11 looked for the note?

12 A No, he did not.

13 Q Did you have any discussion with him about
14 what happened and what transpired in Mr. Foster's
15 suite that night?

16 A I don't recall doing anything except having
17 told him on the phone that there was no note there.

18 Q And there was no further discussion when
19 you got to the house?

20 A No.

21 MR. CHERTOFF: I have nothing more.

22 EXAMINATION

1 BY MR. BEN-VENISTE:

2 Q Ms. Thomasson, my name is Richard
3 Ben-Veniste and I'm counsel for the minority. Just a
4 few questions about matters that you've testified
5 about here today.

6 If I understand the chronology correctly,
7 the first you learned about Mr. Foster's death was in
8 responding to the page that you received as you were
9 leaving the Sequoia restaurant on the evening of the
10 20th; is that correct?

11 A That's correct.

12 Q Do you recall whether that page requested
13 that you provide your location?

14 A Yes, it did.

15 Q When you returned the call, instead of
16 providing the location, if I understand your
17 testimony, you indicated that you would prefer to
18 wait to be connected to Mr. Watkins since you were at
19 a pay phone and it might be inconvenient to wait
20 there with the possibility that others might want to
21 use the phone, et cetera?

22 A Exactly.

1 Q And then within some short period of time
2 you were connected to Mr. Watkins?

3 A That's correct.

4 Q And then Mr. Watkins told you that
5 Mr. Foster's body had been found and that he had
6 committed suicide, in substance?

7 A That's correct.

8 Q Did he indicate where Mr. Foster's body had
9 been found, at Fort Marcy Park or some location?

10 A I don't think in that conversation he told
11 me where Vince was found or anything.

12 Q When he indicated to you that, in response
13 to your inquiry as to whether there was anything that
14 you could do, that he would like you to see whether
15 Mr. Foster left a note in his office, do you recall
16 whether he indicated that no note had been found with
17 Mr. Foster's body?

18 A I don't think that he indicated that to me.

19 Q And so you've testified that, in fact, you
20 immediately made arrangements to get back over to the
21 White House. You were with a party of several
22 people, and you walked up to M Street from the

1 Washington Harbor area, got in the cab and got over
2 to the White House.

3 Would you say that would have been within
4 15 or 20 minutes of the time that you hung up the
5 phone with Mr. Watkins?

6 A I think within 15 or 20 minutes I was back
7 at the White House.

8 Q And then once at the White House, you've
9 indicated that you spoke to several people. Could
10 you provide an indication of what the mood was in the
11 White House when you arrived there?

12 A Everybody at the White House that I saw
13 that was staff was very, very upset. It was apparent
14 that both men and women had been crying. Everybody
15 was just very distraught. They kept saying to each
16 other how could Vince do this? Why did he do it?
17 What causes this? Why did he do it? We needed him.
18 Just over and over again. It was almost like a
19 broken record because people kept saying the same
20 things to each other, and then you'd stop in the hall
21 and you'd hug someone, and everybody would say well,
22 are you okay, are you okay, how do you feel.

1 And we all felt like we had let Vince down
2 in some form or fashion by not recognizing in him
3 that he had more depression than we might have had.
4 It was very, very discouraging for us to know that
5 our peer -- that we failed our peer so much.

6 Q And then when Mr. Nussbaum came along, you
7 indicated to him that you had been asked to see
8 whether there was a note in the office; correct?

9 A Correct.

10 Q And you went upstairs with Mr. Nussbaum?

11 A Correct.

12 Q So at that point, I take it you assumed
13 that Mr. Nussbaum would be able to let you into his
14 own office, if it was necessary?

15 A Yes, if it was necessary.

16 Q And your recollection is that there was
17 someone who was cleaning the office who was on the
18 way out as you walked in with Mr. Nussbaum?

19 A That's correct.

20 Q And your recollection is that you went
21 directly into Mr. Foster's private office?

22 A That's correct.

1 Q And that's across a small area from
2 Mr. Nussbaum's office; correct?

3 A That's correct.

4 Q Were the lights on in his office, if you
5 noticed?

6 A I did not notice that.

7 Q While you were in the office, did you go
8 behind the desk area?

9 A Yes, I did. I sat in Mr. Foster's chair.

10 Q And you began to look on the surface of his
11 desk, I think you said?

12 A Yes, sir.

13 Q And you looked behind in the credenza?

14 A Correct.

15 Q Specifically, did you look for or in any
16 briefcase?

17 A I did look. There was one briefcase
18 sitting under Mr. Foster's office that had a flap
19 that flipped over. I opened that flap and looked to
20 see if there was anything there that looked like a
21 note. There wasn't, flapped it back and left it
22 under the desk.

1 Q So you thumbed through the papers that were
2 there in the briefcase?

3 A I would not say I even really thumbed
4 through them. I was looking for something that would
5 be obvious.

6 Q That would be left out for someone to find?

7 A Exactly. If you were leaving it for a
8 brain who's not committed suicide nor tried, it would
9 seem to me if you were going to do that, you would
10 leave the note where it would not be too obvious, but
11 yet wouldn't be hidden either.

12 Q Did you look inside any drawer?

13 A I opened the drawers. I opened the center
14 drawer. I opened the drawers on either side of the
15 desk to see if there was something laying on the top
16 of any one of those drawers, even an envelope or even
17 a simple piece of paper that might have been folded
18 in half that might have that information in it.

19 Q In other words, something which would not
20 be discovered perhaps immediately upon Mr. Foster's
21 leaving the office that day, but would not be hidden
22 in some fashion either?

- 1 A That's correct.
- 2 Q And so I take it it did not take you very
- 3 long to look in these different places for the kind
- 4 of material you were looking for?
- 5 A It was a very quick search.
- 6 Q And during the time that you were doing
- 7 that, you indicated that Mr. Nussbaum was very
- 8 distraught. Did he glance over at what you were
- 9 doing or did he have his head down the whole time?
- 10 A I don't really recall but certainly Bernie
- 11 had his head down. He kept shaking his head and
- 12 shaking his head and shaking his head. I'm sure
- 13 Bernie felt even worse than I did because he was
- 14 Bernie's deputy, and for Bernie not to realize these
- 15 things were going on with Vince, he probably was even
- 16 more distraught than I was.
- 17 Q Mr. Nussbaum was aware of the fact of what
- 18 you were doing and where you were looking?
- 19 A Oh, absolutely.
- 20 Q Now, at some point, it is your recollection
- 21 that Maggie Williams came into the office?
- 22 A Correct.

- 1 Q Did she say why she came in?
- 2 A She came in -- she said she came in just to
- 3 sit in that seat one more time, that every time she
- 4 had a problem since she had been in the White House
- 5 and she had a problem that she didn't know how to
- 6 deal with, she would come to Vince, flop down in that
- 7 particular location and tell Vince what the problem
- 8 was, talk through it with him and walk out with some
- 9 solution. And she said I can never, ever do that
- 10 again now, Patsy, I don't know what I'm going to do.
- 11 I don't know how I'm going to solve all my problems
- 12 now.
- 13 Q Was she openly crying?
- 14 A She was openly crying.
- 15 Q And you observed her leave the office?
- 16 A I observed her leave the office.
- 17 Q Did she carry anything with her?
- 18 A Only the Kleenex in her hand, sir.
- 19 Q She had no files with her?
- 20 A No, she had no files with her.
- 21 Q With respect to Mr. Nussbaum, he came back
- 22 in the office, that is to say Mr. Foster's private

1 office, after Ms. Williams had left?

2 A Correct.

3 Q How long would you say that you and he
4 remained in the office before you left?

5 A Very, very short period of time, less than
6 a couple of minutes.

7 Q Basically, acknowledging that there was no
8 note obviously left?

9 A Obviously -- I indicated to him there's no
10 note. Bernie, there's nothing I can find and he said
11 maybe we ought not be in here and I said fine, I'm
12 ready to get out of here anyway, it's spooky. And I
13 walked out ahead of Bernie.

14 Q At that point, did you notice whether
15 Mr. Nussbaum went back to his office for any purpose
16 or whether he -- did he accompany you wherever you
17 were going?

18 A I don't recall that.

19 Q So to your recollection, he may have gone
20 back into his own office?

21 A He could have gone back into his own
22 office. He could have come back out with me. I just

1 don't recall. I don't even recall how I got from the
2 second floor back downstairs.

3 MR. BEN-VENISTE: I have nothing further.

4 EXAMINATION

5 BY MR. CHERTOFF:

6 Q Just on this last little point. He came
7 back in and essentially within a moment -- actually,
8 let me withdraw the question and set the stage.

9 After Ms. Williams left, Mr. Nussbaum came
10 back in; correct?

11 A Correct.

12 Q And within a moment or two, he indicated to
13 you that he thought maybe you should leave?

14 A That's correct.

15 Q And you then walked out of Mr. Foster's
16 office; correct?

17 A Correct.

18 Q Do you know whether Mr. Nussbaum walked out
19 of Mr. Foster's office?

20 A Mr. Nussbaum was right behind me.

21 Q And the office door to Mr. Foster's office
22 is literally about a foot or two feet away from the

1 office door to the suite; correct?

2 A It's in very close proximity.

3 Q Were you talking to Mr. Nussbaum as you
4 both left?

5 A I don't recall having any further
6 conversation with Mr. Nussbaum.

7 Q Not even pleasantries or commiseration
8 together?

9 A No, I don't recall doing that.

10 Q And you don't have a recollection of
11 whether he followed you out the suite door or whether
12 he made a turn to go into his own office?

13 A I don't recall.

14 Q And then you went down to return the
15 call -- rather, to beep Mr. Watkins to indicate that
16 you hadn't found a note; right?

17 A That's correct.

18 Q And we established that that beep occurred
19 at 11:36 in the evening; right?

20 A I think that's correct.

21 Q And after that point in time, you were
22 never back in the suite, the White House counsel's

100

1 suite?

2 A That's correct.

3 MR. CHERTOFF: Fine. Thank you.

4 EXAMINATION

5 BY MR. BEN-VENISTE:

6 Q One thing that Mr. Chertoff has mentioned
7 leads me to ask you, with respect to the First Lady's
8 office, I think Mr. Chertoff said it was right next
9 door to the counsel's office. It is the next office
10 down the hallway, is it not?

11 A That's correct.

12 Q But to get downstairs from the counsel's
13 office, would you need to pass by the door of that
14 office?

15 A To get downstairs from the counsel's
16 office, you would not go by the First Lady's office.
17 You would leave the counsel's office and either take
18 the elevator down or walk in front of the elevator to
19 the stairwell, which is probably 10 or 15 feet down
20 and turn to the left and go down the stairwell.

21 Q And the reverse would be true in coming
22 upstairs to enter Mr. Nussbaum's office or the

1 counsel's suite of offices. You would not
2 necessarily -- you would not, if you were taking a
3 direct route, walk past the First Lady's office?

4 A That's correct.

5 Q Finally -- I don't know whether
6 Mr. Chertoff has asked you this, but I know I
7 haven't -- did you remove any documents from that
8 office that night?

9 A No, sir, I did not.

10 MR. BEN-VENISTE: Nothing further.
11 (Whereupon, at 4:01 p.m., the deposition
12 was concluded.)

13

14

15

PATSY L. THOMASSON

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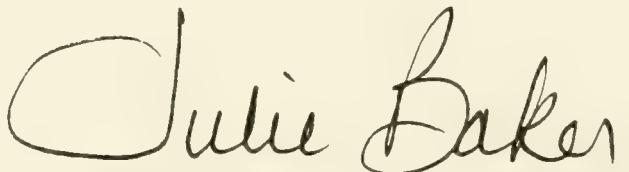
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

102

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

**DEPOSITION OF LINDA R. TRIPP
IN RE: S. RES. 120**

VOLUME I

TUESDAY, JULY 11, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of LINDA R. TRIPP, called for examination pursuant to notice of deposition, at 3:03 p.m. in Room 538 of the Dirksen Senate Office Building, before GARRETT J. WALSH, JR., Court Reporter, and sworn by EDWIN G. CROWLEY, a Notary Public within and for the District of Columbia, when were present:

APPEARANCES

ROBERT J. GIUFFRA, JR., Esq.

Majority Chief Counsel

NEAL E. KRAVITZ, Esq.

Minority Principal Deputy Special Counsel

U.S. Senate

Committee on Banking, Housing, and Urban Affairs

534 Dirksen Building

Washington, DC 20510

On behalf of the Committee.

KIRBY D. BEHRE, Esq.

Paul, Hastings, Janofsky & Walker

1299 Pennsylvania Avenue, NW

Tenth Floor

Washington, DC 20004-2400

On behalf of the Deponent.

CONTENTS

WITNESS

EXAMINATION

| | |
|--|---|
| Linda R. Tripp by Mr. Giuffra | 4 |
|--|---|

P R O C E E D I N G S

(3:03 p.m.)

Whereupon,

LINDA R. TRIPP

was called as the deponent and, having been first
duly sworn, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

B Y M R. G I U F F R A:

Q Good afternoon, Ms. Tripp.

A Good afternoon.

Q My name is Robert Giuffra. I'm the Chief
Counsel of the Senate Banking Committee.

And, to my left is Neal Kravitz, who is
the Principal Democratic Special Deputy Counsel.

And, we will both be asking you questions today at
your deposition.

Would you please state your name for the
record?

A Linda R. Tripp.

Q And, the spelling of your last name?

A T-r-i-p-p.

Q This is a deposition which is conducted

1 pursuant to Senate Resolution 120. This resolution,
2 a copy of which I have if you need to look at it,
3 establishes a special committee administered by the
4 Banking Committee to conduct an investigation and
5 public hearings involving Whitewater Development
6 Corporation and a series of other related matters.

7 Section 1(b)(1) of Senate Resolution 120
8 authorizes investigation and public hearings into
9 "whether improper conduct occurred regarding the way
10 in which White House officials handled documents in
11 the Office of White House Deputy Counsel, Vincent
12 Foster, following his death."

13 And, do you understand that the focus of
14 today's deposition will be the handling of the
15 documents in Mr. Foster's office?

16 A I do.

17 Q How were you requested to testify? How
18 did you learn that you were going to be here today?

19 A Through my attorney.

20 Q And, this is a deposition in advance of
21 public hearings that the Committee has scheduled to
22 begin next Tuesday, which would be July 18th. There

1 is some possibility you will be asked to testify.

2 And, if you are asked to testify, we will
3 give you prompt notice. If there are any days upon
4 which, probably the two weeks after, starting on July
5 18th, you are unavailable for some reason, you know,
6 let us know and we will try to accommodate your
7 schedule if we can.

8 The procedure today will be that I will
9 first ask a series of questions, and then Mr. Kravitz
10 will ask you a series of questions. You will be
11 testifying under oath.

12 And, if, at any time today, you don't
13 understand a question, please let me know and I will
14 rephrase it. If, at any time, you find a question
15 confusing or misleading, again, you know, let us know
16 and we will rephrase the question.

17 If, at any time today, you feel like you
18 need a break, if you get tired or something and want
19 to just get up and stretch, again, let us know and we
20 will work with that and have a break.

21 Mr. Walsh, who is the Court Reporter, will
22 be preparing a record of the questions and answers

1 that you give. This deposition will be treated as
2 something called "Committee Confidential," meaning
3 that we will not make the transcript public until
4 after -- until the commencement of the hearings.

5 Now, it's likely that the deposition
6 transcript will be included in any record of the
7 proceedings that the Committee will publish in a
8 green bound volume about this phase of its inquiry.
9 You have a right to be represented by counsel.

10 And, I see you are represented by Mr. --
11 is it Behre?

12 MR. BEHRE: Behre. Can I ask you a
13 question?

14 MR. GIUFFRA: Yes. Do you want to state
15 an appearance first for the record?

16 MR. BEHRE: Yes, Kirby Behre, on behalf of
17 Linda Tripp. I have a question for you about the
18 release of the transcripts.

19 That will be done upon the commencement,
20 so next Monday?

21 MR. GIUFFRA: No. The depositions will be
22 treated as Committee Confidential until that time,

1 meaning only a limited number of people can see the
2 deposition, the people who have signed
3 confidentiality agreements.

4 At that point, the members of the
5 Committee might well, in examining witnesses, use
6 deposition testimony that Ms. Tripp and other people
7 have given. We are not going to be, for example,
8 making available the deposition transcript in its
9 entirety at that time.

10 MR. BEHRE: Okay.

11 MR. GIUFFRA: But, any portion of her
12 deposition transcript could be used during the course
13 of the hearings that are going to start on July 18th.
14 That said, after the hearings are over, when we
15 publish the proceedings of the hearings and the
16 investigation as to Mr. Foster's death, the whole
17 deposition will be made available to the public.

18 MR. BEHRE: Okay. Do you understand what
19 he just said?

20 THE DEPONENT: I do. There are, however,
21 leaks obviously, because we continue to read about
22 them in the paper, the people that you've deposed to

1 date. So, where is the confidentiality being
2 violated?

3 MR. GIUFFRA: Do you want to go off the
4 record for a second?

5 (An off-the-record discussion ensued.)

6 MR. GIUFFRA: Just to briefly summarize,
7 we discussed some of the procedures that the
8 Committee has in place to protect the confidentiality
9 of deposition transcripts.

10 BY MR. GIUFFRA: (Continuing)

11 Q The resolution specifies a procedure for
12 the conduct of depositions. And, this procedure
13 specifies that objections to the forms of questions
14 can be noted for the record.

15 Counsel can object on grounds of privilege
16 or relevance. And, there is a procedure which calls
17 for us to go to the Committee Chairman to rule on
18 such objections.

19 You will be given an opportunity to review
20 a transcript of the deposition to correct errors in
21 transcription. The depositions will be made
22 available in a secure room at the Senate beginning on

10

1 July 14th, which is four days prior to the start of
2 the hearings.

3 We will also make a copy of the deposition
4 available to your counsel four days prior to any
5 testimony that you might give at the public hearings.
6 And, we would ask that your counsel keep that
7 deposition transcript confidential and secure.

8 Do you have any other questions?

9 A No.

10

11

12 Q And, what is your present business
13 address?

14 A The Pentagon.

15 Q And, what is your -- do you work for the
16 Department of Defense?

17 A I do.

18 Q What is your present position at the
19 Department of Defense?

20 A I'm a GS-1025-15, Public Affairs
21 Operations Officer.

22 Q What is a Public Affairs Operations

1 Officer?

2 A It's a series in the federal government.

3 Q What do you do at the Defense Department?

4 A Currently, I'm the Deputy Director of the
5 Joint Civilian Orientation Conference, which is a
6 conference hosted by the Secretary of Defense
7 annually for civic leaders throughout the country to
8 familiarize them with the military and Department of
9 Defense. And, we take them on a week-long trip.

10 I also do community relations and media.

11 Q Do you work with the press?

12 A I did until I took over this duty.

13 Q Okay. Prior to becoming the Deputy
14 Director of this particular function that you have --

15

16 A JCOC is easy --

17 Q JCOC.

18 A -- and well known.

19 Q Prior to becoming the Deputy Director of
20 JCOC, what was your position?

21 A Also Public Affairs Operations Officer,
22 but I was on the media side of the House as opposed

1 to the outreach side of the House.

2 Q And, did you work with the press in that
3 capacity?

4 A I did.

5 Q Okay. And, prior to working in the Public
6 Affairs unit and in the media section of the
7 Pentagon, what position did you hold?

8 A That was at the White House.

9 Q You were at the White House?

10 A Right.

11 Q Okay. When did you join the Defense
12 Department?

13 A 22 August '94.

14 Q And, when did you join the White House?

15 A April of '90.

16 Q And, what position did you have in April
17 of 1990 at the White House?

18 A I'm not certain what the title was. I
19 took a position to be what is referred to within the
20 White House, or was during the Bush Administration, a
21 west wing floater to the senior advisers to the
22 President.

1 Q And, what did you do as a west wing
2 floater to senior advisers to the President?

3 A I didn't. I took that position basically
4 for the exposure and in the hope that something else
5 would arise once I was in the west wing. And, it
6 did.

7 And, I became the Executive Assistant to
8 the Assistant to the President for Media Affairs.

9 Q And, who was that?

10 A Dorrance Smith.

11 COURT REPORTER: What was that first name,
12 please?

13 THE DEPONENT: D-o-r-r-a-n-c-e.

14 BY MR. GIUFFRA: (Continuing)

15 Q And, for how long did you have this
16 position?

17 A About a year, I believe.

18 Q So, that would be about until April 1991?

19 A Right.

20 Q Okay. What position did you obtain in
21 April of 1991?

22 A At that point, I was asked to work for

1 then Chief of Staff to the President, Sam Skinner.

2 Q And, what position did you hold with Mr.
3 Skinner?

4 A I did much the same thing I had done with
5 Dorrance. But, it was a transitional time, because
6 he was getting ready to leave or it was imminently
7 possible that he would leave.

8 And, I don't know that there was an
9 official title during that transition period. But,
10 that's where I was.

11 Q What type of -- what type of activities
12 did you undertake for Mr. Skinner?

13 A Correspondence, phone liaison, speech
14 writing, sort of jack-of-all-trades in the Chief of
15 Staff's office, liaison with the other staff.

16 Q Okay. And, for how long did you work for
17 Mr. Skinner?

18 A Until he left in August.

19 Q And, did you obtain a new position at the
20 White House in August of 1991?

21 A I did.

22 Q And, what position was that?

1 A Executive Assistant to the Deputy Chief of
2 Staff to the President.

3 Q And, who was the Deputy Chief of Staff?

4 A Robert Zoellick.

5 Q Okay. And, for how long did you work for
6 Mr. Zoellick?

7 A Through the loss of the election. And, I
8 suppose it officially terminated at the end of the
9 Administration.

10 Q Which would have been January 20th, 1993.

11 A Yes.

12 Q Okay. Did you then obtain a position in
13 the new Administration?

14 A I went on leave following, some time
15 during Christmas through the inauguration of
16 President Clinton and received a call, I believe --
17 I'm trying to remember when -- from a former aide to
18 President Bush telling me that she had recommended
19 that I work directly for President Clinton during the
20 transition and in his immediate office. So, I -- I
21 did subsequently receive a call from someone in the
22 immediate office and worked in the immediate office

16

1 for the first three months of the Administration.

2 Q For the President himself?

3 A The immediate office is composed of -- at
4 the time was Bruce Lindsey, Nancy Hernreich and then
5 their support staff. And, for that period, really I
6 had no title and I had my same pay that I had had
7 prior and basically set up their -- assisted with
8 files, the President's personal files, just
9 acclimating them to the White House.

10 It was an extremely demanding time period.

11 Q And, did there come a time when you then
12 joined the Counsel's Office?

13 A Yes.

14 Q And, when was that?

15 A I'm still unclear on the date that I
16 joined the Counsel's Office, but it was, I believe,
17 the end of -- toward the end of April, because I
18 think I finished three months in the immediate office
19 and went upstairs to the Counsel's Office at the
20 request of Vince Foster tentatively for a very short
21 period so that I would see whether it was something I
22 wanted to do. So, it was not to be a permanent thing

1 on my part at that time. It subsequently turned into
2 it.

3 Q For how long were you a member of the
4 Counsel's Office staff?

5 A I guess I was officially a member of the
6 Counsel's Office staff until I left. However, I
7 really was relieved of any duties shortly after Lloyd
8 Cutler came on.

9 COURT REPORTER: After?

10 THE DEPONENT: Lloyd Cutler, counsel to
11 the President following Mr. Nussbaum.

12 BY MR. GIUFFRA: (Continuing)

13 Q And, was that in the spring of 1994 that
14 Mr. Cutler joined the White House?

15 A Yes, it was. It was an overlap period, a
16 short overlap period.

17 I would say the last week of April, the
18 first week of May, perhaps in that time period.

19 Q Okay. And, what did you do at the White
20 House from the time Mr. Cutler joined until you
21 joined the Defense Department?

22 A I don't think I left the west wing office

1 until later on in May. But, I was roleless (sic), in
2 my opinion.

3 I asked to be moved into a different
4 location. I'm trying to think where I sat.

5 There was an empty desk in the old DOB
6 Office of the Counsel where I sat and basically did
7 nothing but prepare my resume for quite some time,
8 for --

9 Q And, when again did you --

10 A -- weeks. May.

11 Q And, you left in May?

12 A Uh-huh. Then, I went on leave. I had
13 remarkable amounts of leave accrued. And, so I went
14 on leave.

15 Q And, when did you officially, again, join
16 the --

17 A August 22nd.

18 Q Were you asked to leave the White House
19 Counsel's Office?

20 A No. Well, let me think about that. Joel
21 Klein -- I had several meetings with Joel Klein, at
22 which time I said I was very uncomfortable with

1 Bernie having left and with the fact that I was
2 roleless (sic) at that point.

3 And, I believe at a second meeting, he
4 said, "Well, since Lloyd has his own person and he
5 uses her strictly clerically, there really is no role
6 for you. That's all handled with the associates
7 across the street. So, that would be best."

8 And, it was never, "You must leave," but
9 the inference was "Find something else."

10 Q I just have one more general question.
11 When you worked at the White House, was this a civil
12 service position?

13 A Yes, apolitical civil service throughout.

14 Q Okay. This is just a background question
15 we ask all witnesses:

16 Are you aware of the Committee's request
17 for certain documents from the White House relating
18 to the handling of papers in Mr. Foster's office?

19 A No.

20 Q Okay. Do you recall preparing or creating
21 any documents relating to the handling of papers in
22 Mr. Foster's office?

20

1 A Repeat that again.

2 Q Did you prepare any notes or memorandum
3 relating to the handling of papers in Mr. Foster's
4 office?

5 A I prepared memoranda one evening that had
6 to do with -- for Joel Klein's signature that had to
7 -- and those were released to the press -- that had
8 to do with saving the trash, retrieving the burned
9 bags, not deleting electronic mail, I believe. And,
10 I believe they went in different directions to the
11 staff, widely disseminated.

12 Q Did you prepare any other documents that
13 you are aware of?

14 A I don't recall.

15 Q Like, for example, did you make any
16 personal notes of activities that occurred relating
17 to the papers in Mr. Foster's office?

18 A Following his death, is that what you are
19 --

20 Q Yeah.

21 A No.

22 Q Okay. And, any files you might have had

1 before you left the White House, you would have kept
2 it left at the White House?

3 A Yes.

4 Q Okay. Did you speak to anyone prior to
5 this deposition?

6 A About what?

7 Q The fact the deposition was occurring?

8 A My employer.

9 Q Okay. Did you speak to anyone other than
10 your counsel about the substance of what you would be
11 saying here today?

12 A No.

13 Q Okay. If I could direct your attention to
14 the period of July 1993, June/July 1993, what were
15 your responsibilities in the Counsel's Office during
16 that period?

17 A Let's see, after the first two weeks when
18 Steve Neuwirth and Vince, at different times,
19 explained to me what they would like me to do, and at
20 that point I made the decision to take the position
21 permanently, maintaining my civil service status.
22 The duties were defined to me as not only the office

1 manager and the point of contact administratively for
2 the office and liaison with the senior staff but also
3 to be able to speak on behalf of Mr. Nussbaum, to act
4 as spokesperson when necessary, to write his routine
5 correspondence, to alleviate the administrative flow
6 and to delegate work.

7 I basically became the principal assistant
8 in that office. And, that created a bit of tension.

9 Q Were you the principal assistant to Mr.
10 Nussbaum?

11 A Yes.

12 Q So, you would describe yourself as the
13 office manager for the --

14 A I would describe myself as the Executive
15 Assistant to the Counsel to the President.

16 Q Okay. What was Ms. Pond's role at this
17 point in time?

18 A When I came on, she and Deb Gorham both
19 had shared a title or had individual titles, which
20 were the same, and that was Staff Assistant to. And,
21 when my title was made known and my salary, then it
22 created a tension which was easily alleviated by

1 changing their titles.

2 And, I wrote a memo for Bernie's signature
3 changing their titles. Titles are fairly meaningless
4 at the White House.

5 Q And, they all became Executive Assistants?

6 A Yes, they did.

7 Q Were you more highly compensated than Ms.
8 Pond and Ms. Gorham?

9 A Yes, than both. Even after it was -- her
10 salary was adjusted, it was still significantly more.

11 Q Did Ms. Pond and Ms. Gorham report to you?

12 A No.

13 Q Did you ultimately serve as the --
14 effectively as the office manager?

15 A In my opinion, I did. I delegated work, I
16 intervened on telephone calls so that the substance
17 was not necessarily relayed to Bernie but shipped
18 across the street.

19 We -- I was responsible for the mail flow.
20 We had a young man named Tom Castleton, of whom I'm
21 certain you are aware, who opened the mail, date
22 stamped it and then would give it to me in different

24

1 folders for action.

2 Q Did you do any work for Vince Foster prior
3 to his death?

4 A The only thing I recall ever doing for
5 Vince Foster, other than answering his phones and
6 relaying messages, is helping out once during a tax
7 -- during tax return time with some Xeroxing for Deb.

8 Q Do you recall whose tax returns were --

9 A It was the Clinton's.

10 Q And, you were asked to just make copies,
11 photocopies, of the Clinton's tax returns?

12 A I think I offered. She was very, very
13 busy during that period.

14 Q Do you recall doing anything more for Mr.
15 Foster before his death?

16 A Substantively, not at all.

17 Q So, Ms. Gorham was his primary assistant?

18 A Absolutely.

19 Q Do you recall whether Ms. Pond did any
20 work for Mr. Foster?

21 A I would be amazed if Ms. Pond did any work
22 for Vince Foster.

1 Q What was Ms. Pond's -- what were Ms.
2 Pond's responsibilities during this period?

3 A That's a good question. I think she
4 answered his phones, took messages and scheduled his
5 appointments after a fashion.

6 Q Could you repeat the last -- after a
7 fashion?

8 COURT REPORTER: After a fashion.

9 BY MR. GIUFFRA: (Continuing)

10 Q What do you mean by "after a fashion?"

11 A In her own way.

12 MR. BEHRE: Could we go off the record for
13 one second.

14 (An off-the-record discussion ensued.)

15 BY MR. GIUFFRA: (Continuing)

16 Q Was Ms. Pond well regarded in the
17 Counsel's Office so far as you know?

18 A I think everyone liked Betsy.

19 Q Was she a competent Executive Assistant?

20 A She was not.

21 Q And, why was she not a competent Executive
22 Assistant?

1 A I'm not certain why she was incompetent.
2 I think that there were underlying problems of which
3 we became aware as time went on that may have
4 contributed to her incompetence.

5 MR. GIUFFRA: Could we go off the record
6 for a second?

7 (An off-the-record discussion ensued.)

8 MR. GIUFFRA: Could you just read the last
9 answer back?

10 (The Court Reporter read the last answer
11 back, as requested.)

12 BY MR. GIUFFRA: (Continuing)

13 Q What were the underlying problems of which
14 you became aware that contributed to Ms. Pond's
15 incompetence?

16 A It became evident that she had a severe
17 drinking problem.

18 Q And, did -- was this drinking problem --
19 strike that.

20 Were the lawyers in the Counsel's Office
21 aware of Ms. Pond's drinking problem?

22 A I believe they were aware of it.

1 Q Mr. Nussbaum was aware of her drinking
2 problem?

3 A Yes.

4 Q Am I correct that Ms. Pond still works at
5 the White House?

6 A Apparently she is still on the payroll.

7 Q When you say, "Apparently she is still on
8 the payroll," what do you mean by that statement?

9 A I mean that she is being paid right now
10 from the White House as far as I know.

11 Q Do you have any understanding as to
12 whether she is performing any work at the White
13 House?

14 A I believe she is not.

15 Q Do you have any idea why she is still on
16 the White House payroll if she is not performing any
17 work?

18 A I have no firsthand knowledge.

19 Q Do you have any secondhand knowledge as to
20 why she may still be on the payroll if she is not
21 performing any work?

22 A It's -- no. It's hearsay. I don't.

1 Q Well --

2 A I have no knowledge.

3 Q Has anyone indicated to you that Ms. Pond
4 is being kept on the White House payroll because of
5 the fact -- because of anything having to do with
6 this Committee's investigation into Whitewater or
7 related matters?

8 A No one has ever said that to me.

9 Q Do you have a suspicion that that is why
10 she is being kept on the White House payroll?

11 A I would rather --

12 MR. BEHRE: That is just calling for
13 speculation. She said she has no basis for
14 knowledge.

15 MR. GIUFFRA: Let's go off the record.
16 (An off-the-record discussion ensued.)

17 BY MR. GIUFFRA: (Continuing)

18 Q Has anyone told you why Ms. Pond is being
19 kept on the White House payroll if she is doing no
20 work?

21 A I don't know that she is doing no work. I
22 only know that she is on the payroll.

1 Q Have you heard anything about -- strike
2 that.

3 Have you had any discussions with anyone
4 about Ms. Pond in the last six months?

5 A Yes.

6 Q Okay. Who have you discussed Ms. Pond
7 with in the last six months?

8 A Her name has come up in conversation with
9 various people as a former co-worker and someone -- a
10 mutual acquaintance, that sort of thing.

11 Q Okay. Do you recall -- do you recall who
12 you might have spoken to Ms. Pond -- spoken about Ms.
13 Pond with?

14 A I can't recall a name. I know that I have
15 brought her up and it has been brought up to me.

16 Q Do you recall the substance of any
17 comments that anyone has made to you about Ms. Pond
18 in the last six months?

19 A I was told that she is still on the White
20 House payroll. But, I truly cannot recall with whom
21 I had that conversation except that I heard it more
22 than once.

30

1 I heard at various times that she was off
2 the payroll and back on and off and back on; and, she
3 is currently on. That may well be untrue. That is
4 just what I was told.

5 And, it was poised to me in such a way as
6 to ask me if I had personal knowledge that she was
7 still -- where she was working in the White House;
8 since she was still on the payroll, did I know what
9 she was doing. I didn't know.

10 Q Did anyone indicate to you why she might
11 have been on the payroll, off the payroll, on the
12 payroll again?

13 A It appeared to be a question that no one
14 seemed to know the answer to.

15 Q And, you have no further testimony that
16 you can give to illuminate the reason why this might
17 have occurred?

18 MR. KRAVITZ: Is that question meant to
19 include or to exclude speculation?

20 BY MR. GIUFFRA: (Continuing)

21 Q Other than speculation on your own part.

22 A I don't know how to answer that.

1 Q Do you --

2 A I'm not here to speculate. I'm here to
3 give you --

4 Q All right. Do you believe that Ms. Pond
5 is being kept on the White House payroll for any
6 reason relating to the fact that she is a potential
7 witness in --

8 A I can't speculate on that. I can't.

9 MR. BEHRE: That clearly calls for
10 speculation in light of the answer she has given. I
11 mean, she doesn't even work at the White House
12 anymore.

13 MR. GIUFFRA: Okay. I just want to make
14 sure that no one said to her that Ms. Pond is being
15 kept on the payroll because of --

16 MR. BEHRE: I think you've asked her that.

17 MR. GIUFFRA: Okay.

18 BY MR. GIUFFRA: (Continuing)

19 Q And, your answer to that would be no?

20 A Repeat that again.

21 Q Has anyone said to you that they believe
22 Ms. Pond is being kept on the White House payroll

1 because of the fact that she may have testimony to
2 give related to Whitewater?

3 MR. GIUFFRA: Why don't you read the
4 question back?

5 (The Court Reporter read back the last
6 question, as requested.)

7 THE DEPONENT: No one said that to me.

8 BY MR. GIUFFRA: (Continuing)

9 Q Has anyone said that to you indirectly,
10 for example, to someone else and then the same --
11 that someone else repeated it to you?

12 A It has been said, but not to me.

13 Q But, it has been repeated to you?

14 A It has.

15 Q And, was it -- the person to whom it was
16 said, was it a person at the White House?

17 A It was.

18 Q Do you know who told the person at the
19 White House that Ms. Pond was being kept on the
20 payroll because of something having to do with
21 Whitewater?

22 A Can we go off the record a minute? Are we

1 allowed to do that?

2 MR. GIUFFRA: Yes.

3 (An off-the-record discussion ensued.)

4 THE DEPONENT: Yes.

5 BY MR. GIUFFRA: (Continuing)

6 Q Okay. Who was the person?

7 A The person who spoke of why Betsy was
8 being kept on was a low level staffer named Kelly
9 McClure in Patsy Thomason's old office.

10 Q What office is that?

11 A The Office of Administration. She is -- I
12 believe she handles personnel actions.

13 Q And, who told Ms. McClure why Patsy
14 Thomason (sic) was being kept on?

15 MR. KRAVITZ: You mean why Betsy Pond was?

16 MR. GIUFFRA: Excuse me. I'm sorry.

17 THE DEPONENT: That, I don't know. That
18 was not said to me at all.

19 BY MR. GIUFFRA: (Continuing)

20 Q Okay. So, someone told you that Kelly
21 McClure said this, that -- let me strike this.

22 You were told by someone that Kelly

1 McClure said that Patsy Thomason (sic) was being kept
2 on the payroll for some reason relating to
3 Whitewater?

4 A Not Patsy Thomason.

5 Q I'm sorry. I want to apologize. You were
6 told by someone that Betsy Pond was being kept on the
7 payroll -- strike that.

8 You were told by someone that Kelly
9 McClure said that Betsy Pond was being kept on the
10 payroll for something having to do with Whitewater?

11 A Yes.

12 Q Okay. And, do you have any other further
13 knowledge bearing on --

14 A Kelly McClure was a low level, very low
15 level, staffer during the Bush Administration. This
16 Administration saw fit to give her more
17 responsibility of which I'm not certain she is
18 capable, and so her comments I took as being her own
19 and not those of the White House.

20 Q Okay. How were phone messages kept in the
21 Counsel's suite during June and July 1993?

22 A We had different systems. I'm not certain

1 when I asked that we go on the system that was used
2 in the immediate office, which was computer friendly
3 and databased.

4 Prior to that, we were doing typewritten
5 logs, actually on the computer but not saved
6 documents or no sort of history to the document,
7 daily. Deborah had her own system.

8 Q And, what was Deborah's system?

9 A She had telephone -- written telephone
10 logs.

11 Q Note pads, telephone log pads?

12 A She had that as well as her computer, not
13 pads so much as, I believe, logs with lines, that
14 sort of thing.

15 We eventually all -- I believe all of us
16 consolidated to the computer prior to Mr. Foster's
17 death.

18 Q And, how did -- how were messages taken
19 via the computer?

20 A We would log in the -- this was apparently
21 designed for the President's Office. And, we took
22 that software and used it ourselves.

1 It was a system whereby if you entered a
2 name that had already been entered at any other time,
3 you could call up how often, what dates, what times,
4 for instance, that person had called and not been
5 able to get through. And, that's key.

6 These logs only indicated those callers
7 who were not put through, for whatever reason, to Mr.
8 Nussbaum or to Mr. Foster.

9 Q If someone wanted to ascertain, as we sit
10 here today, if you know, who would have called, for
11 example, Mr. Nussbaum on a particular date in July
12 1993, would it be possible to ascertain that
13 information?

14 A Only if they did not reach Mr. Nussbaum
15 that day.

16 Q So, if you had reached Mr. Nussbaum, the
17 fact that you had called would be erased from the
18 computer?

19 A It wouldn't be on the computer at all.

20 Q So, there were no -- strike that.

21 As far as you know, the White House
22 Counsel's Office did not maintain any sort of a

1 system whereby there was a record of who called
2 particular people in the --

3 A Any incoming call, you mean --

4 Q Yes.

5 A -- documented? Absolutely not.

6 Q Were you familiar with Mr. Foster's
7 office?

8 A Somewhat, yes.

9 Q Was he someone who maintained a neat
10 office?

11 A Very.

12 Q Was he very particular about the location
13 of documents in his office?

14 A Very.

15 Q Did he maintain neat files? Did he have a
16 particular filing system that he wanted to be
17 followed?

18 A He and Deborah were both extremely
19 efficient. They both were very neat.

20 I can't speak to their system. I can only
21 speak to what appeared to be a very efficient system.

22 Q Do you recall whether Mr. Foster kept

1 documents on his coffee table in his office?

2 MR. KRAVITZ: You mean, as a general
3 practice or at one time or another?

4 MR. GIUFFRA: As a general practice.

5 THE DEPONENT: I can't recall noticing
6 anything being left. I do recall, on occasion,
7 perhaps if he had a visitor and the visitor brought a
8 file that if they were sitting in the sofa/chair area
9 that there would be files on the coffee table but not
10 as a storing place, if that's what you mean.

11 BY MR. GIUFFRA: (Continuing)

12 Q So that after the visitor left, he would
13 have taken the files and moved them to their
14 appropriate place?

15 A That would be my thought. I never saw him
16 do that.

17 Q Just another question about Ms. Gorham.
18 Where does Ms. Gorham now work?

19 A It's my understanding that she eventually
20 went through different positions and ended up back at
21 the law firm from whence she came. And, I can't
22 remember the name -- Dow, Lohnes.

1 COURT REPORTER: What was that, please?

2 THE DEPONENT: Dow, Lohnes. I have no
3 idea how to spell it.

4 MR. GIUFFRA: L-o-h-n-e-s, D-o-w.

5 BY MR. GIUFFRA: (Continuing)

6 Q And, so she stayed at the White House for
7 some time after Mr. Foster's death and then --

8 A She did.

9 Q -- left and returned to the law firm where
10 she was originally employed?

11 A Well, she went from the west wing to the
12 old DOB and helped out Bill Kennedy. And, from there
13 went to a law firm -- I used to know the name and I'm
14 not certain now -- which was a short-lived tenure and
15 then I had heard that she was back at Dow, Lohnes.

16 I really don't know where she is now.

17 Q Did you ever discuss Mr. Foster's system
18 for filing documents with Ms. Gorham?

19 A Occasionally.

20 Q What did she tell you about Mr. Foster's
21 system for filing documents?

22 A I believe it was in the context -- our

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1 conversations were in the context of her
2 organizational methods and the admirable way she kept
3 files as opposed to my rather haphazard method. For
4 instance, in the credenza in front of Deborah's desk,
5 there were very, very neat files, all of which
6 pertained to that side of the office as opposed to
7 the Bernie side of the office.

8 And, at one point, I asked her how she was
9 able to delineate so -- and find them at any given
10 time. She is outstanding administratively.

11 In any event, she pulled one file out at
12 one point, just to give me a sense of how. And, it
13 was a letter that Vince had written to a young
14 student, I believe, who had been his waiter at a
15 restaurant in Little Rock.

16 And, it was just a nice, little note to
17 the waiter saying, you know, "It was nice seeing
18 you." And, it was just a very thoughtful thing to
19 do.

20 In any event, she had that file. It had
21 its own file.

22 I mean, it was very impressive, is the

1 best way to --

2 Q Thank you notes to waiters in Little Rock
3 at Little Rock restaurants.

4 A Right. He was that kind of guy, though.
5 Just when it came up, it was because I was frankly
6 mesmerized by the system.

7 Q Do you recall anymore about the system
8 that she had in place?

9 A The credenza in front of her desk, of
10 which she was apparently the caretaker, was
11 accessible to all of us, I think. I mean, none of us
12 felt that we couldn't go near it.

13 There were "In" boxes and "Out" boxes on
14 top of that. Should we have needed to, we would have
15 accessed that.

16 We did not, however, have access nor ever
17 chose to have access to Mr. Foster's personal files
18 that he kept in his office, those that were kept in
19 there.

20 Q Was there a delineation between the files
21 that Mr. Foster kept in his office and the files that
22 were kept in the main sort of waiting area?

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1 A That was the thought.

2 Q Was this something that was known amongst
3 the people in the office?

4 A I believe we were aware of that.

5 Q What sort of files did he maintain in the
6 outer office?

7 A The outer, meaning in front of Deb's?

8 Q Yeah, in front of Deb's?

9 A Well, if that letter was any indication, I
10 think it was routine correspondence. It was things
11 that were of a less sensitive nature obviously.

12 Q And, Mr. Foster maintained sensitive
13 documents in his own office?

14 A Again, I can only go by what I observed
15 and what I believed to be true. Mr. Foster was
16 involved in a lot of -- more personal, for instance,
17 tax returns and so forth of the Clintons.

18 And, so obviously that is something that
19 wouldn't be out in public. That wouldn't be for
20 those of us in the outer office to have access to.

21 Q What sort of matters did you observe that
22 Mr. Foster was involved in while he was Deputy White

1 House counsel?

2 A It was my observation that he worked
3 closely with Bernie on virtually everything except
4 the Louis Freeh nomination as well as working very
5 closely with President and Mrs. Clinton, particularly
6 Mrs. Clinton.

7 Q Did he work closely with Maggie Williams?

8 A Very closely.

9 Q Was Mrs. Clinton a frequent visitor to Mr.
10 Foster's office?

11 A She was a visitor. I don't know how
12 frequently.

13 She -- our offices were adjacent to one
14 another. So, her comings and goings were so frequent
15 that I don't know that I noticed how often she
16 actually came in and saw Vince or Bernie.

17 We saw her all the time.

18 Q If you were to estimate, was it on a daily
19 basis, several times --

20 A Coming into our office?

21 Q Yeah.

22 A No.

1 Q Say, a few times a week, on average?

2 A I wouldn't even say that. She travelled a
3 lot.

4 When she was in, it was not unlikely for
5 her to pop in and see Vince or Bernie. And, the door
6 would be closed. And, that would be that.

7 Q Did Mrs. -- was Mrs. Clinton a frequent
8 telephone caller of Mr. Foster?

9 A I would say the telephone calls were
10 probably more frequent than the visits. Perhaps
11 that's a better way of putting it.

12 Q Would you have any estimate, on average,
13 of how often she would have called in a given week?

14 A I didn't find it to be one way or another.
15 She was another caller.

16 And, she was the First Lady. So,
17 obviously we made every effort to find him whenever
18 she called from wherever she was.

19 We had calls from everybody in that
20 office. So, it didn't stick out particularly as
21 anything unusual.

22 Q Did -- were you aware of whether Mr.

1 Foster would visit with the First Lady in her office?

2 A Oh, yeah.

3 Q Was that a frequent --

4 A Yes.

5 Q -- occasion?

6 A Yes.

7 Q Do you recall -- what do you recall about
8 those occasions?

9 A This White House is a very open, friendly
10 place. And, there was a lot of back and forth.

11 There was not a lot of standing on
12 ceremony. If he needed to go next door and she was
13 in, he did. And, much the same way, vice versa.

14 Q Do you recall him, on any occasion, when
15 he was going to visit Mrs. Clinton bringing any
16 documents with him or file folders?

17 MR. BEHRE: Could you clarify the time
18 period you are talking about?

19 MR. GIUFFRA: Any time prior to Mr.
20 Foster's death.

21 THE DEPONENT: Yes. I do remember him
22 having file folders. I don't know what was in them.

1 BY MR. GIUFFRA: (Continuing)

2 Q Do you recall the First Lady, on any of
3 the occasions when she visited Mr. Foster, bringing a
4 file folder with her?

5 A I don't have a recollection of Hillary
6 having a file folder.

7 Q Was Maggie Williams a frequent visitor of
8 Mr. Foster?

9 A Yes.

10 Q Was Ms. Williams' office down the hall
11 from the Counsel's suite?

12 A It's the second one down, adjacent to
13 Hillary's.

14 Q Could you estimate, in an average week,
15 how frequently Ms. Williams would visit Mr. Foster?

16 A I would say she was one of his most
17 frequent visitors.

18 Q Do you have any understanding as to the
19 types of matters that Mr. Foster was working on with
20 Ms. Williams?

21 A I really have no firsthand knowledge.

22 Q Do you have a secondhand knowledge?

1 A Not really. I never asked questions. So,
2 it wasn't my business what Maggie wanted.

3 Q Okay. Did you ever see Maggie Williams
4 bring any documents to Mr. Foster's office?

5 A I don't think I've ever seen Maggie
6 without file folders in her arms, frankly.

7 Q Was Ms. Williams a more frequent visitor
8 of Mr. Foster or Mr. Nussbaum?

9 A Mr. Foster.

10 Q Was this by a substantial degree?

11 A Oh, yes.

12 Q So, would you describe her as a relatively
13 infrequent visitor of Mr. Nussbaum?

14 A A visitor on occasion. I don't know how
15 to define infrequent and frequent. It's difficult.

16 Q But, her primary contact was Mr. Foster?

17 A Yes.

18 Q And, do you recall occasions when Mr.
19 Foster would visit Ms. Williams in her office?

20 A Yes.

21 Q And, was he a frequent visitor of Ms.
22 Williams?

1 A Again, he was known to pop in and see
2 Maggie, but so was Bernie occasionally. So --

3 Q It was your understanding that the
4 relationship between the White House Counsel's Office
5 and the First Lady's Office was close?

6 A Close?

7 Q There were a lot of contacts between the
8 First Lady's Office and the White House Counsel's
9 Office?

10 A Well, we also had a lot of contact with
11 the immediate office, with Bruce Lindsey, with the
12 Chief of Staff's Office, as well. So, I don't know
13 how you define close.

14 Q Would those be the three offices that the
15 White House Counsel's Office would have had its most
16 frequent contacts?

17 That would be the immediate office of the
18 President, the First Lady's Office and the Chief of
19 Staff's Office.

20 A Well, the Staff Secretariat was -- there
21 was frequent interaction with that office. Let me
22 think for a minute.

1 Bear in mind that the First Lady's Office,
2 to include her Chief of Staff's Office, was directly
3 adjacent to ours. So, perhaps it seemed as though it
4 was a closer interaction.

5 I don't think it was, certainly not from
6 my perspective, working for Bernie.

7 Q Did anyone ever indicate to you that the
8 Counsel's Office reported to the First Lady's?

9 A The Counsel's Office?

10 Q That the counsel to the President reported
11 to the First Lady.

12 A Oh, no. It was known that Bernie had a
13 history with Hillary, but there was never the sense
14 that --

15 Q He had to clear things with the First Lady
16 before taking action?

17 A I never saw such a thing.

18 Q Okay. With regard to Mr. Lindsey, was he
19 a frequent visitor of Mr. Foster?

20 A Bruce was in our office frequently. I
21 tend to think, though, that it was more to see Bernie
22 than Vince.

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1 Q Do you recall whether Mr. Foster had a
2 burn bag in his office?

3 A It's my thought that he did not.

4 Q Was a burn bag maintained in the outer
5 office?

6 A Uh-huh. We had, at least, two, if not
7 three, at any given time.

8 Q Why do you think that he did not have a
9 burn bag?

10 A Well, frankly, I don't recall if Bernie
11 had one either. They both seemed to -- we had the
12 burn bags and everyone knew where the burn bags were.

13 And, I don't know. I never really thought
14 about that.

15 Q Did -- were there any safes located in the
16 White House Counsel's suite?

17 A There were two safes in Bernie's office
18 only.

19 Q Who was aware of the combinations to those
20 safes?

21 A I think it's safe to assume Bernie wasn't.
22 Betsy, myself and Deborah Gorham, possibly Tom

1 Castleton. I don't know about Vince.

2 Q Why do you think it's safe to assume that
3 Mr. Nussbaum did not know the combination to the
4 safe?

5 A I would bet his personal worth that he
6 couldn't open a safe to save his life. That's just
7 my feeling.

8 Excuse me, could I go to the ladies room?

9 MR. GIUFFRA: Sure. Let's take a break.

10 (Whereupon, a recess is taken at 4:10
11 p.m., to reconvene at 4:34 p.m., this same date.)

12 BY MR. GIUFFRA: (Continuing)

13 Q Okay. As of the time of Mr. Foster's
14 death, what was your understanding as to his role
15 with regard to the President's and First Lady's
16 financial matters?

17 A It was my understanding that he was their
18 personal attorney and handled their personal legal
19 business.

20 Q What was the basis for your understanding?

21 A I had a conversation with Bernie Nussbaum
22 about that.

1 Q And, what did Mr. Nussbaum say to you?

2 A Well, I asked the question. Having worked
3 in the Bush White House, it had been my experience
4 that the Counsel and the Deputy Counsel worked
5 exclusively on matters pertaining to the presidency
6 as opposed to the President himself.

7 And, my question to Bernie was why it
8 appeared that Vince, as Deputy Counsel, seemed to
9 spend an inordinate amount of time being the
10 President's and the First Lady's personal attorney as
11 opposed to what I perceived to be what the role had
12 historically been. His response to me was that he
13 had been in Arkansas and continued that role here in
14 addition to his duties to the Administration as
15 Deputy Counsel.

16 Q What was it that gave you the impression
17 that Mr. Foster handled personal legal matters for
18 the President and the First Lady?

19 A I'm not sure how I knew. I knew that, for
20 instance, he prepared or at least prepared for
21 release financial papers, taxes.

22 I knew that there were papers pertaining

1 to a real estate venture. I did not know and never
2 had, at that time, heard the word, "Whitewater."

3 Q What was your -- what was the basis for
4 your understanding that Mr. Foster had papers
5 relating to a real estate venture?

6 A I overheard in the office, just things
7 that Deb was working on at a certain point in time.
8 Deb spent an inordinate amount of time on the -- what
9 is it called, that little earpiece, typing --

10 Q Typing letters. Was she taking dictation?

11 A Yes, it was. But, he dictated into a
12 machine. And, she spent virtually all day
13 transcribing whatever she transcribed.

14 Q And, what led you to believe that some of
15 this transcription involved a real estate
16 development?

17 A Well, I would ask her periodically what
18 she was working on, did she need any help. She was a
19 one man show for Vince.

20 Q And, what did she say, "I'm working on
21 something related to a real estate matter for Mr.
22 Foster?"

1 A No. She would say, "It's personal. It's
2 personal, the President and First Lady's personal
3 business," or, "It has to do with," -- you know, we
4 might say something and I think it was not just
5 myself but others offered to help Deb, who was very,
6 very busy.

7 And, at times, she would mention what it
8 was she was working on generically, not -- none of it
9 was ever familiar to me in terms of what we were
10 working on. So, it was -- it was obvious that his
11 role was an expanded role.

12 Q Do you have any estimate of the amount of
13 time that Ms. Gorham spent working on matters that
14 you would describe as personal legal matters of the
15 President and First Lady?

16 A You had better ask Deb.

17 Q But, did you have any sense from your
18 observing?

19 A I would say a good portion of the time.

20 Q Would you say more than 50 percent?

21 A I don't want to speculate on the
22 percentage. I don't know.

1 Q Was it your understanding that Mr. Foster
2 did not want other personnel in the Counsel's Office
3 working on his matters?

4 A I don't know what he wanted. The
5 perception was, though, that it was private and
6 perhaps exclusive to certain individuals who had a
7 need to know.

8 Q Did you have any understanding in your
9 capacity as office manager that Mr. Foster did not
10 want yourself or Ms. Pond to be, for example, doing
11 transcription for him?

12 A Let's back up a minute and not refer to me
13 as office manager --

14 Q Okay.

15 A -- because that was not my title. And,
16 I'm afraid that would cause some --

17 Q Okay.

18 A -- disagreement. Vince never made it
19 plain to any of us that he did not want us to.

20 He was a very private individual. Deborah
21 was also a very, very private individual.

22 So, I think out of respect for that, in

1 both of them, none of us wanted to cross that line.

2 Q Did you ever hear Mr. Foster discuss
3 personal legal matters of the President and First
4 Lady?

5 A I heard conversations with Maggie earlier
6 on, maybe in the May/June time frame. Substantively,
7 I can't remember what but it was not something that
8 Bernie was working on.

9 It was more or less a personal thing.
10 And, I blew it away.

11 It didn't concern us. It wasn't anything
12 we were working on.

13 Q That the rest of the Counsel's Office was
14 working on; is that correct?

15 A Anything that I was familiar with. It was
16 more of a personal nature, and it wasn't anything
17 that I knew about.

18 Q Do you remember the subject matter?

19 A I don't.

20 Q Did it have to do with the real estate
21 development?

22 A I don't know. I think, in large part, it

1 was because he had been a law partner of Hillary's.

2 And, so we all just assumed they had
3 business that hadn't quite come to a close, since it
4 had been so recently dissolved.

5 MR. GIUFFRA: Do you want to stop right
6 here? It's 20 minutes to five.

7 Do you think you can go for another five
8 minutes?

9 MR. BEHRE: Five minutes probably isn't
10 going to buy us anything. So, we probably should
11 stop.

12 MR. GIUFFRA: Okay. We have agreed to
13 stop the deposition. And, we will resume tomorrow at
14 1 p.m.

15 And, we very much appreciate your coming
16 back. And, I know this is a difficult thing to have
17 to go through. And, we appreciate your cooperation.

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1 (Whereupon, the deposition is adjourned at
2 4:40 p.m., Tuesday, July 11, 1995, to reconvene on
3 Wednesday, July 12, 1995.)

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11 LINDA R. TRIPP

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CERTIFICATE OF NOTARY PUBLIC

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I, Edwin G. Crowley, a notary public in and for the District of Columbia, do hereby certify that the witness whose testimony appears herein appeared before me and was duly sworn by me.



Edwin G. Crowley
Notary Public in and for
the District of Columbia

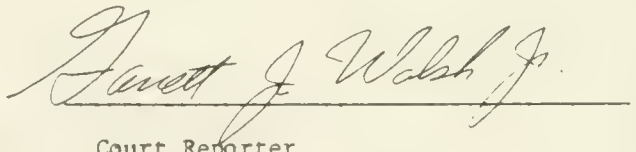
My commission expires 14 October 1995.

Certificate of Court Reporter

=====

I, Garrett J. Walsh Court Reporter,

do hereby certify that the testimony contained herein is a true record of the testimony given by said witness, and I further certify that I am neither attorney nor counsel for, related to, or employed by any of the parties to the action in which this statement is taken; and, further, that I am not a relative or an employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.



Court Reporter

**DEPOSITION OF W. DAVID WATKINS
IN RE: S. RES. 120**

TUESDAY, JULY 11, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of W. DAVID WATKINS, called for examination pursuant to notice of deposition, at 9:45 a.m. in Room 538 of the Dirksen Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.
Majority Chief Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
GLENN F. IVEY, Esq.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

TY COBB, Esq.
Hogan & Hartson, L.L.P.
111 South Calvert Street
Baltimore, Maryland 21202
On behalf of the Deponent.

ALSO PRESENT: TRACY SWANN

CONTENTS

WITNESS**EXAMINATION**

| | |
|--------------------------|----|
| W. David Watkins | |
| by Mr. Giuffra | 3 |
| by Mr. Ben-Veniste | 62 |

P R O C E E D I N G S

(9:45 a.m.)

Whereupon,

W. DAVID WATKINS

was called as a witness herein, and having been first
duly sworn, was examined and testified as follows:

E X A M I N A T I O N

BY MR. GIUFFRA:

Q Good morning, Mr. Watkins.

My name is Robert Giuffra, the Chief
Counsel of the Senate Banking Committee.

To my left is Richard Ben-Veniste, who is
the Special Counsel for the Democrats.

To Richard's left is Glenn Ivey, who is
Deputy Special Counsel for the Democrats.

Further down, I don't know if we've met
before.

MS. SWAN: Tracy Swan.

BY MR. GIUFFRA:

Q Mr. Watkins, would you state your name for
the record?

A David Watkins.

4

Q And the spelling of your last name?

A W-A-T-K-I-N-S.

Q This is a deposition being conducted
according to Senate Resolution 120, a copy of which I
have available for you if you'd like to see it.

This Resolution establishes a Special
Committee administered by the Banking Committee to
conduct an investigation involving Whitewater
Development Corporation and related matters.

Section 1.B.1 of Senate Resolution 120
authorizes an investigation and public hearings into,
quote, "whether improper conduct occurred regarding
the way in which White House officials handled
documents in the office of White House Deputy Counsel
Vincent Foster, following his death," close quote.

You understand that this particular
Section 1.B.1 will be the focus of your deposition
here today?

A I do.

Q When did you learn that you would be asked
to testify before the Senate?

A I think I learned, not this past week, but

1 the end of the prior week, that there was a
2 possibility, but not the exact date.

3 Q And who notified you that you would be
4 asked to testify?

5 A Ty Cobb.

6 Q Mr. Cobb is your attorney here today?

7 A That's correct.

8 MR. GIUFFRA: Mr. Cobb, if you could
9 perhaps state an appearance for the record?

10 MR. COBB: I'd be happy to.

11 My name is Ty Cobb. I'm a partner at
12 Hogan & Hartson. I represent Mr. Watkins.

13 BY MR. GIUFFRA:

14 Q This is a deposition in advance of public
15 hearings that will be held, beginning on July 18th,
16 and will probably run for two or three weeks after
17 that. There's a possibility you'll be asked to
18 testify.

19 We will give you advanced notice of the
20 date upon which the Committee would like to hear your
21 testimony if that is the case, and we'll work with
22 you in terms of scheduling.

1 As we mentioned, before we started, if
2 there are particular days that are real problematic
3 for you, if you could just let us know in advance,
4 and to the extent we can, we'll try to work with you.
5 The procedure today, we'll be asking you a series of
6 questions.

7 I'll be asking the questions, first, then
8 I presume Mr. Ben-Veniste will be asking some
9 questions.

10 You'll be asked to testify under oath.

11 If at any time today you don't understand
12 a question, or if you find a question confusing,
13 please let either of us know, and we'll rephrase the
14 question.

15 There's no attempt being made here to
16 mislead or trick anyone, so if you have a problem
17 with a question, please let us know.

18 If you need a break, again, let us know
19 and we'll take a break.

20 The stenographer will prepare a record of
21 the questions and answers, and this deposition will
22 be treated as Committee confidential until the

1 beginning of the hearings.

2 At some point, the Committee is likely to
3 publish a record of the proceedings, which will be
4 one of those green books over there, which will have
5 the full transcript of your deposition.

6 You have a right to be represented by
7 counsel, and you've chosen to do so.

8 Counsel may object to the form of
9 questions, and such objections will be noted for the
10 record.

11 Counsel may also object on grounds of
12 privilege or relevance, and there's a procedure which
13 is specified in Senate Resolution 120 for handling
14 such objections.

15 And if we get to that, we can go through
16 the procedure, unless counsel has questions about it
17 now.

18 You'll be given an opportunity to review a
19 transcript of the deposition to correct any errors in
20 transcription. The depositions will be made
21 available in a secure room at the Senate on July
22 14th, which is four days before the start of the

1 hearings.

2 We will also make available to your
3 counsel, four days prior to any testimony you might
4 be asked to give, a copy of your deposition
5 transcript, and we would ask that counsel keep the
6 deposition transcript confidential.

7 Do you have any questions, Mr. Watkins?

8 A No.

9

10

11

12 Q And your present business address?

13 A 2285 Rutherford Road, Carlsbad,
14 California.

15 Q Did you speak to anyone, prior to this
16 deposition, about the substance of the testimony you
17 would give today?

18 A I did not.

19 Q Are you someone who normally takes notes?

20 A Sometimes.

21 Q Do you recall taking any notes in
22 connection with the investigation into Mr. Foster's

1 death and related matters?

2 A No.

3 Q The Committee has requested that the White
4 House provide documents relevant to the handling of
5 papers in Mr. Foster's office.

6 Have you searched for documents that might
7 be responsive to that request?

8 A No.

9 Q Are you aware of any documents you might
10 have prepared that would be responsive to that
11 request?

12 A No.

13 Q What is your present position?

14 A I'm Vice President for Corporate
15 Communications and Investor Relations for Calloway
16 Golf Company.

17 Q When did you join Calloway?

18 A November 1994.

19 Q Prior to joining Calloway, what was your
20 position?

21 A Well, from July 'til November, I was in
22 Little Rock operating privately.

10

1 Q And then prior to July 1994, what was your
2 position?

3 A Prior to I guess some time in June 1994, I
4 was Assistant to the President for Management and
5 Administration in the White House.

6 Q Did you join the White House in January of
7 1993?

8 A That is correct.

9 Q Did you hold the position of Director of
10 Management and Administration, beginning in January
11 of 1993?

12 A I did.

13 Q Prior to joining the White House, what
14 position did you hold?

15 A I was Deputy Campaign Manager for
16 Operations in both the Clinton for President
17 Committee, the primary campaign, and then the same
18 position in the general election.

19 Q When did you join the Clinton campaign?

20 A August of 1991.

21 Q Prior to joining the Clinton campaign,
22 what was your position?

1 A I was the President of the Watkins Group,
2 a merchant banking firm in Little Rock, Arkansas.

3 Q For how long were you the President of the
4 Watkins Group?

5 A I've been the President of the Watkins
6 Group since it was formed in 1977. It has had, it
7 was actually a holding company for various businesses
8 I've been involved in.

9 Q And your educational background?

10 A I have a BS/BA from the University of
11 Arkansas in Fayetteville, Arkansas.

12 I attended graduate school at the
13 University of Arizona in Tucson.

14 Q What degree did you receive from Arizona?

15 A I didn't complete my MBA.

16 Q As of July 1993, what was the location of
17 your office at the White House?

18 A Basement.

19 Q Of the West Wing?

20 A Yes.

21 Q What was your office telephone number?

22 A I don't recall.

1 Q Did you have a cellular phone?

2 A Yes.

3 Q You don't recall the telephone number of
4 your cellular phone?

5 A No.

6 Q Did you have a car phone also?

7 A No.

8 Q What were your responsibilities at the
9 White House as of July 20, 1993?

10 A I was Director of Management and
11 Administration. I was Assistant to the President for
12 Management and Administration.

13 Q What were your responsibilities in your
14 capacity of Director of Management and Administration
15 at the White House?

16 A The management and execution of the White
17 House budget, White House personnel, facilities,
18 liaison with the White House Military Office.

19 Q Did you have any responsibility for
20 security matters?

21 A In what regard?

22 Q With regard to, for example, did the

1 Secret Service in any way report to you?

2 A It did not report to me in any I guess
3 chain of command. I was, at times, in conjunction
4 with the Chief of Staff or the liaison for the Chief
5 of Staff, with the Secret Service.

6 Q Did Patsy Thomasson report to you when you
7 served as Director of Management and Administration
8 at the White House?

9 A She did.

10 Q What was Ms. Thomasson's responsibilities?

11 A She was Director of the Office of
12 Administration.

13 Q What is the Office of Administration?

14 A The Office of Administration oversees the
15 accounting, the personnel. The Office of
16 Administration is set up to administer the Executive
17 Office of the President with computer services,
18 personnel, payroll, etcetera.

19 Q Did Ms. Thomasson have any responsibility
20 with regard to security matters at the White House as
21 far as you know?

22 A She served a lot as my direct

1 representative with the Secret Service personnel,
2 mostly the uniformed officers that worked the gates
3 and the buildings.

4 Q Do you know whether Ms. Thomasson would
5 have had the ability to obtain entry to the Counsel's
6 suite in the West Wing?

7 A In what manner?

8 Q Would Ms. Thomasson have been able to ask
9 one of the uniformed officers to grant her entry to
10 the Counsel's suite upon request?

11 MR. BEN-VENISTE: Is your question
12 designed to elicit whether Mr. Watkins knew that the
13 uniformed guards would open the door if she asked?

14 MR. GIUFFRA: That's my question.

15 THE WITNESS: I don't know. I'm not sure.

16 BY MR. GIUFFRA:

17 Q Would you have had that ability to gain
18 entry into the Counsel's suite, had you asked someone
19 in the uniformed division to do so?

20 A You mean if it were locked?

21 Q Yes.

22 A I'm not sure.

1 Q Do you know whether Ms. Thomasson had a
2 security clearance as of July 20, 1993?

3 A Whether she had completed all the
4 requirements and had a security clearance? I don't
5 believe she did.

6 Q Why do you not believe that she had
7 completed those requirements?

8 A I think I was told by her that she had
9 just not finished all the paper work. There were
10 others in the White House that had not.

11 It became a situation that was reported in
12 the newspapers, I believe, that she was one that had
13 not completed all the paper work.

14 Q What is the significance of the fact that
15 someone does not have a security clearance? Are
16 there limitations placed on their ability, for
17 example, to look at certain types of documents?

18 A I don't think so.

19 Q Were you aware of any limitations on Ms.
20 Thomasson's ability to look at particular kinds of
21 documents prior to the time that she obtained the
22 security clearance?

1 A I'm not aware of any.

2 Q Do you know whether Ms. Thomasson
3 ultimately obtained a security clearance?

4 A I believe she did.

5 MR. GIUFFRA: Let's go off the record for
6 a second.

7 (Discussion off the record.)

8 BY MR. GIUFFRA:

9 Q So far as you knew, did Ms. Thomasson work
10 for Governor Clinton prior to when he became
11 President?

12 A The best that I know is that she was not
13 on his staff. I think she was appointed on the
14 Highway Commission.

15 Q Do you know whether Ms. Thomasson ever
16 worked for a man by the name of Daniel Lassiter?

17 A I believe she did.

18 Q Do you know who Daniel Lassiter is?

19 A I know that he was a businessman in
20 Arkansas.

21 Q Are you aware of the fact that Mr.
22 Lassiter has been, was convicted of various narcotics

1 offenses?

2 MR. BEN-VENISTE: Has that got something
3 to do with whether documents were improperly handled
4 at the White House?

5 I mean, this just seems to be such an
6 overt stretch and character assassination at this
7 point. It seems to be so unconnected to what we're
8 doing that I question the appropriateness of this
9 line of questioning.

10 MR. GIUFFRA: I'm just asking one question
11 and going on.

12 MR. BEN-VENISTE: Well, asking one
13 question can involve any number of different things.
14 It doesn't make it any more appropriate because it's
15 one question or 86 questions.

16 MR. COBB: He has no personal knowledge of
17 these events. He doesn't really have anything to do
18 with them.

19 MR. GIUFFRA: My only question is whether
20 he has knowledge of the fact that Mr. Lassiter had
21 been convicted of narcotics violations.

22 MR. COBB: He didn't have any personal

1 knowledge of it except whatever's on public record.

2 BY MR. GIUFFRA:

3 Q Were you aware of that from the public
4 record?

5 A Yes.

6 Q During your time at the White House, did
7 you work with Bernard Nussbaum?

8 A Yes.

9 Q Did you work with him on a frequent basis?

10 A Only in the sense that we were assistants
11 to the President. We attended staff meetings on a
12 regular basis, but nothing more than that.

13 Q Did you work on a regular basis with
14 Maggie Williams?

15 A Same situation, probably more frequently
16 because of fulfilling the needs that she had in her
17 position.

18 Q Why was that you had more frequent contact
19 with Ms. Williams?

20 A Only because there were certain people
21 that made more requests of us and needed more things,
22 and Bernie happened to be one that did not.

1 Q What was the nature of your relationship
2 with Mr. Foster?

3 (Pause.)

4 A I would say a friend, not a close friend,
5 but a friend.

6 Q For how many years had you know Mr. Foster
7 prior to his death?

8 A I've probably known him since he was eight
9 or nine years old.

10 Q While you were both at the White House,
11 which was the period January to July 1993, what was
12 the extent of your contact with Mr. Foster?

13 A It was periodic.

14 Q Would you estimate on a daily basis,
15 weekly basis?

16 A I'm not exactly sure what you're asking
17 me. He did not attend the daily staff meetings that
18 I attended. I would, from time to time, have
19 conversations with him on something, some point of
20 activity, but not on a regular basis.

21 He became, I guess, during the Travel
22 Office incident, there was more contact with him.

1 Q Do you recall any particular matters about
2 which you had contact with Mr. Foster during his
3 tenure as Deputy White House Counsel?

4 A I'm sorry?

5 MR. COBB: Specific matters other than the
6 Travel Office?

7 MR. GIUFFRA: Yes.

8 THE WITNESS: I don't recollect any
9 specifics.

10 BY MR. GIUFFRA:

11 Q Could you just briefly describe, for the
12 record, the nature of your contacts with Mr. Foster
13 with regard to the Travel Office matter?

14 A I had meetings with him over the Travel
15 Office matter.

16 Q What was the Travel Office matter?

17 A In May of '93, after having an outside
18 accounting firm come in and do a review of the
19 operations of the White House Travel Office, the
20 staff was dismissed.

21 Q What were the results of that review by
22 this outside accounting firm with regard to the

1 Travel Office?

2 MR. COBB: You mean briefly describe -- it
3 was discussed in the GAO report in detail.

4 MR. GIUFFRA: I just want to get it
5 briefly on the record. We haven't really gotten
6 much.

7 THE WITNESS: They issued a report and
8 there was gross mismanagement in parts of the Travel
9 Office.

10 BY MR. GIUFFRA:

11 Q Was Mr. Foster involved the in the
12 decision to dismiss the members of the Travel Office?

13 A He was a part of the conversations. I
14 don't know that you would characterize that he was a
15 part of the decision to dismiss the Travel Office
16 staff.

17 Q Who would have made the decision to
18 dismiss the Travel Office staff?

19 A I made the decision with the concurrence
20 of the Chief of Staff.

21 Q Who else would have been involved, who
22 else at the White House would have been involved in

1 looking into the Travel Office matter prior to the
2 dismissal of the staff?

3 A Again, all of this is in the GAO report
4 and on the record, the people involved and their
5 involvement.

6 As my assistant, Ms. Thomasson, was
7 involved through the various points. The
8 communications staff was involved, not in the
9 dismissal, but the subsequent announcements,
10 etcetera, the handling of the media questions.

11 Q Did Ms. Williams have any involvement in
12 the Travel Office matter?

13 A I don't believe so.

14 Q Did there come a time when the Travel
15 Office matter became somewhat controversial in the
16 media?

17 A Yes.

18 Q When was that?

19 A May of '93.

20 Q Do you recall any discussions that you had
21 with Mr. Foster with regard to the controversy that
22 developed about the Travel Office?

1 A We had some discussion, yes.

2 Q Do you recall anything Mr. Foster might
3 have said about the controversy that developed over
4 the Travel Office?

5 A Not specifically.

6 Q Do you have any general recollection?

7 A Well, the general recollection that we
8 were all dismayed by the continued press hits that we
9 were taking and we, you know, took the report of the
10 accounting firm and found that we were well within
11 the proper thing to do to dismiss them.

12 Q Was Mr. Foster particularly upset over the
13 controversy that developed about the Travel Office?

14 A I think we were all upset over the
15 controversy that developed over the Travel Office.

16 Q What was your understanding of Mr.
17 Foster's areas of responsibility as Deputy White
18 House Counsel?

19 A I don't know that I had a real
20 interpretation of specifically what his specific
21 duties were in the Counsel's Office, other than the
22 overall definition of what the Counsel to the

1 President did, and I'm not sure I'm real clear on all
2 of that.

3 Q Did you have any general understanding of
4 the types of matters Mr. Foster was working on?

5 A No.

6 Q As of July 20, 1993, did you have any
7 understanding as to whether Mr. Foster had a role
8 with regard to the President's financial disclosure
9 matters?

10 A Was I aware that he had a role?

11 Q Yes.

12 A I don't recall being aware of that.

13 Q Did you have any knowledge as to whether
14 Mr. Foster was involved in the preparation of the
15 President and First Lady's tax returns?

16 A I don't know at that time that I was
17 aware. I've seen that written since then. I don't
18 recall being specifically aware of it.

19 Q When you say you don't recall being
20 specifically aware of it, do you have any general
21 recollection?

22 A I think he may have been involved. I

1 think I probably knew that he was involved in doing
2 the tax return.

3 Q What was the basis for your knowledge that
4 Mr. Foster was involved in preparing the President
5 and Mrs. Clinton's tax returns?

6 A I don't recall.

7 Q Do you know if anyone else at the White
8 House had any role in the preparation of the
9 President and Mrs. Clinton's tax returns?

10 A I'm not aware.

11 Q You personally did not have any role in
12 the preparation of the President and Mrs. Clinton's
13 tax returns?

14 A No.

15 Q Did you have any knowledge as to whether
16 Mr. Foster worked on personal legal matters for the
17 President and Mrs. Clinton at any time?

18 A Did I have any specific knowledge?

19 Q Or general knowledge?

20 MR. COBB: At any time or at the time that
21 he came to the White House?

22 MR. GIUFFRA: Strike the question. I'll

1 rephrase the question.

2 BY MR. GIUFFRA:

3 Q Did you have any knowledge as to whether
4 Mr. Foster, prior to becoming Deputy White House
5 Counsel, worked on any personal legal matters for the
6 President and Mrs. Clinton?

7 A I generally assumed that he did.

8 Q What was the basis for your assumption
9 that Mr. Foster, prior to becoming Deputy White House
10 Counsel, worked on personal legal matters of the
11 President and Mrs. Clinton?

12 A He was a partner in the same law firm that
13 Mrs. Clinton had been in.

14 Q Do you have any knowledge as to whether
15 Mr. Foster continued to work on personal legal
16 matters of the President and Mrs. Clinton once he
17 became Deputy White House Counsel?

18 A Do I have any personal knowledge?

19 Q Any knowledge, whether direct or indirect.

20 A I think he may have.

21 Q What's the basis for your knowledge?

22 (Pause.)

- 1 A I don't have a specific recollection.
2 Q Do you have a general recollection?
3 A No.
4 Q Were you aware, prior to Mr. Foster's
5 death, that he maintained files in his office with
6 regard to the President and First Lady's finances?
7 A I may have known that.
8 Q What was the basis of your knowledge that
9 Mr. Foster maintained files regarding the President
10 and First Lady's finances in his office?
11 A I think he may have told me that.
12 Q Do you recall when Mr. Foster might have
13 told you that he maintained such files?
14 A No.
15 Q Did the President ever indicate to you
16 that Mr. Foster worked on personal legal matters?
17 A No.
18 Q Do you know whether Ms. Thomasson was
19 aware that Mr. Foster worked on personal legal
20 matters of the President and First Lady?
21 A I'm not aware.
22 Q Did Mr. Foster work on the 1992 Clinton
-

- 1 presidential campaign?
2 A Not in any official capacity.
3 Q Did he perform any work in an unofficial
4 capacity, do you recall?
5 A Not that I recall. I never saw him
6 present at any activities of the campaign.
7 (Pause.)
8 Q When did you first learn of the President
9 and Mrs. Clinton's investment in Whitewater
10 Development Corporation?
11 A I don't recall.
12 Q Is it possible for you to indicate whether
13 you learned of this investment prior to the 1992
14 presidential campaign?
15 A I think probably I knew of it in the 1992
16 campaign.
17 Q That would be your first recollection?
18 A I think so.
19 Q When there were press reports about
20 Whitewater Development Corporation?
21 A Yes.
22 Q Do you have any knowledge as to whether

1 Mr. Foster played any role in responding to those
2 press inquiries regarding Whitewater Development
3 Corporation?

4 A I have no knowledge.

5 Q Do you know a man named James Lyons?

6 A I do.

7 Q Who was James Lyons?

8 A He was an attorney, he is an attorney. I
9 assume he's still in Denver, Colorado. He was sort
10 of the coordinator of attorney group or the legal
11 group in the Clinton campaign.

12 Q Do you know anything about the
13 relationship between Mr. Foster and Mr. Lyons?

14 A I do not.

15 Q Do you know if they were friends?

16 A I don't know.

17 Q As of July 20, 1993, did you ever discuss
18 Whitewater Development Corporation with Mr. Foster?

19 A I don't believe so.

20 Q Did you ever discuss Whitewater
21 Development Corporation with Maggie Williams?

22 A No.

1 Q Did you ever discuss Whitewater
2 Development Corporation with Patsy Thomases?

3 A No.

4 Q Did you ever discuss Whitewater
5 Development Corporation with the President?

6 A No.

7 Q Did you ever discuss Whitewater
8 Development Corporation with the First Lady?

9 A No.

10 Q Do you recall anyone with whom you might
11 have discussed Whitewater Development Corporation?

12 A No.

13 Q Directing your attention to July 20, 1993,

14 --

15 MR. COBB: If you're going to change
16 subjects, can we take a short break?

17 MR. GIUFFRA: Sure.

18 (Recess.)

19 BY MR. GIUFFRA:

20 Q Mr. Watkins, do you now recall your
21 telephone number at the White House?

22 A Yes.

1 Q What was the number?

2 A 456-1655.

3 Q Directing your attention to July 20, 1993,
4 when did you first learn of Mr. Foster's death?

5 A Are you asking what time?

6 Q Yes.

7 A In the evening.

8 Q Do you recall who contacted you about it?

9 A I believe it was someone from the Secret
10 Service.

11 Q What did the Secret Service officer tell
12 you?

13 A First of all, I was beeped. I was
14 attending a movie and I went to the lobby where the
15 pay telephones were and made the call to the number I
16 received. I was told that -- I think I was asked who
17 I was and so forth -- and I was told that Vincent
18 Foster was found at Marcy Park and had shot himself.

19 Q Did you make any phone calls at that
20 point?

21 A No.

22 Q What did you do next?

1 A I went and I talked to the person calling.
2 I said is there positive identification and so forth.
3 They said, yes, we think so. And I went and told my
4 wife, went down to the movie, got her, and I believe
5 it was during that time I was given a number to call
6 at the Park Police, and we left to drive to my home.

7 Q Did you make any telephone calls from your
8 home?

9 A Yes.

10 Q Who did you recall speaking to?

11 A I recall talking to someone at the Park
12 Police. I'm not sure if that was at my home or en
13 route to my home on the cellular, I don't know.

14 And then I called Bill Burton, the Chief
15 of Staff for the Chief of Staff.

16 Q Do you recall anything about your
17 conversation with Mr. Burton?

18 A I told him that Vince Foster had shot
19 himself, and I wanted him to notify Mac.

20 Q Did you give him any other instructions?

21 A I don't recall.

22 Q Did you make any other telephone calls

1 that you recall?

2 A I think I received one from Craig
3 Livingstone.

4 Q Who was Mr. Livingstone?

5 A He was a security officer at the White
6 House.

7 Q Did Mr. Livingstone report to you?

8 A No. He reported to the Counsel's Office.
9 But he advised me that there was positive
10 identification.

11 As I, in my conversations with Park
12 Police, he was insistent that was there positive
13 identification.

14 Q Do you recall any other telephone calls
15 you might have made?

16 A I do not recall.

17 Q Did you give any instructions to Mr.
18 Livingstone?

19 A I don't recall.

20 Q Did there come a time when you were met at
21 your home by the Park Police?

22 A Yes.

1 Q Do you recall anything about the officers
2 who met you?

3 A Only that they were cordial and felt that
4 it was a difficult situation.

5 Q Do you recall if it was a man and a woman
6 who met you?

7 A My recollection is that it was a man and a
8 woman.

9 Q Could you physically describe the woman?

10 A No.

11 Q How about the male officer?

12 A No.

13 Q At that point, did the officers drive you
14 to the Foster home?

15 A Yes.

16 Q What happened at the Foster home?

17 A We walked to the door. I was immediately
18 behind the officers. One of the Foster children
19 answered the door. They asked for Mrs. Foster. She
20 came down and they notified her of what had happened.

21 Q Do you recall anyone else who might have
22 been present during the notification?

1 A There were some children on the stairwell.

2 Q Do you recall anyone else arrived shortly
3 after you did at the Foster home?

4 A Yes.

5 Q Who was that?

6 A Webb Hubbell, Beryl Anthony, and Sharon
7 Bowman. Beryl Anthony and Sharon Bowman were sisters
8 of Vincent Foster.

9 Q Mr. Hubbell -- do you have any knowledge
10 as to whether he, prior to becoming Associate
11 Attorney General, had any role with regard to the
12 President and Mrs. Clinton's legal matters?

13 A No, I'm not aware of that.

14 Q Did there come a time at the Foster home
15 when anyone looked for a possible suicide note?

16 A At the Foster home?

17 Q Yes.

18 A I don't recall.

19 Q Was there ever any discussion of a
20 possible suicide note anywhere?

21 A Yes, during the evening there were a lot
22 of people there. There was some general discussion

1 about, well, you know, everyone was shocked and did
2 not have an explanation or couldn't understand why
3 this would happen, and there was general discussion,
4 was there a suicide note.

5 Q Did you recall anything more about the
6 general discussion about the possible existence of
7 the suicide note?

8 A I'm sorry?

9 Q Let me strike that question.

10 Do you recall any of the phone calls you
11 made from the Foster home, if any?

12 A Yes.

13 Q Who do you recall calling from the Foster
14 home?

15 A Patsy Thomasson.

16 Q Did you make any other calls?

17 A Yes.

18 Q Who else did you call?

19 A Lee Bowman in Little Rock.

20 Q Who is Lee Bowman?

21 A He was the husband of Sharon Bowman.

22 Q That's Vince Foster's sister?

1 A Yes.

2 I believe I was involved, and I don't know
3 if I placed the call, but I talked to a George
4 Frazier in Hope, Arkansas, who is a friend of Mrs.
5 Foster, Vince's mother, and there may have been other
6 calls. I don't know if it was incoming or outgoing
7 but I talked with Mark Gearen.

8 Q Do you recall the substance of your
9 conversation with Mr. Gearen?

10 A He was just expressing, you know, concern
11 and how the family was and so forth, and talking
12 about the announcement or the news release or some
13 kind of release about the event.

14 Q Can you recall any other phone calls that
15 you might have made?

16 A I don't recall.

17 Q Directing your attention to the call to
18 Patsy Thomasson, why did you call Ms. Thomasson?

19 A As a part of the general discussion about
20 the suicide note, I called her and asked her to go to
21 Vince's office and see if there was a suicide note.
22 I informed her of Vince's death and asked her to do

38

1 that.

2 Q Do you recall where Ms. Thomasson was when
3 you contacted her?

4 A No. I think she was beeped.

5 Q Do you recall the approximate time of your
6 call to Ms. Thomasson?

7 A Not specifically, no. It was later in the
8 evening.

9 Q Ten, eleven o'clock?

10 A I would think that's close.

11 Q Do you recall anything more about your
12 conversation with Ms. Thomasson?

13 A No.

14 Q Did Ms. Thomasson indicate to you that she
15 would go to the White House and look for a suicide
16 note in Mr. Foster's office?

17 A Yes, she did.

18 Q Do you recall if Mr. Hubbell made any
19 phone calls from the Foster residence?

20 A No, I don't recall.

21 Q Do you recall whether anyone called Mr.
22 Nussbaum from the Foster residence?

1 A I don't know.

2 Q You have no recollection of anyone?

3 A I have no recollection of other phone
4 calls, no.

5 (Pause.)

6 Q After the Park Police notified Mrs. Foster
7 of Mr. Foster's death, do you recall anything more
8 that the Park Police did at the Foster home?

9 A I don't recall. There became quite a
10 crowd. I think after they did that, my exposure to
11 them basically was over, and I'm not aware of any
12 substantive thing they did.

13 Q Do you recall them attempting to interview
14 Mrs. Foster?

15 A Again, I don't know. I'm not aware of
16 what went on with the Park Police after they notified
17 them because I moved on into another part of the
18 house and started doing other things.

19 Q What part of the house did you move into?

20 A Sort of the den or living room of the
21 house and back also in the kitchen.

22 Q It was a pretty small house, is my

1 understanding.

2 A A small house.

3 Q Do you recall Mr. Hubbell taking any
4 action with regard to the Park Police during the
5 course of this evening?

6 A I do not.

7 Q Do you recall Mr. Hubbell asking the Park
8 Police not to interview Mrs. Foster?

9 A I do not.

10 Q Do you recall escorting the Park Police to
11 their patrol car?

12 A I don't recall.

13 MR. COBB: I'm sorry, I just wasn't
14 listening. I'm sorry. The Park Police escorting
15 Mrs. Foster to the patrol car?

16 MR. GIUFFRA: No.

17 I'll rephrase the question so the record
18 is clear.

19 BY MR. GIUFFRA:

20 Q Do you recall whether you, Mr. Watkins,
21 escorted the Park Police to their patrol car?

22 A I do not recall.

1 Q Do you have any general recollection with
2 regard to escorting the Park Police to the patrol
3 car?

4 A I do not recall.

5 Q Do you recall handing your business card
6 at any time to the Park Police officers who were
7 present at Mr. Foster's house?

8 A I do not recall.

9 Q Is it possible you might have handed your
10 business card to the Park Police officers at Mr.
11 Foster's house?

12 A It's possible.

13 Q Would that have been something you would
14 have normally done?

15 A Not really. I'm not much of a business
16 card handout. I don't do that routinely unless
17 asked.

18 Q Do you recall if the Park Police asked you
19 to seal Mr. Foster's White House office?

20 A I do not recall that.

21 Q Is it possible that the Park Police might
22 have asked you to seal Mr. Foster's office?

1 MR. BEN-VENISTE: That is so vague a
2 question as to what is possible that it advances the
3 inquiry nowhere.

4 MR. COBB: Did they ask you to seal it?

5 THE WITNESS: My recollection is that I
6 was not asked to seal it. It would have been my
7 characteristically, if I'd been asked, I would have
8 done so. I don't know but I do not recall being
9 asked. But had I been, and as I said, I don't
10 believe I was, I would have taken the action.

11 BY MR. GIUFFRA:

12 Q Do you believe that's the kind of request,
13 i.e., to seal the office, that you would normally
14 recall?

15 A Yes. I think that had I been asked that,
16 I would have recalled it. I guess my assumption
17 would have been that that would be part of normal
18 police investigation and they would have taken that
19 action without asking me.

20 Q Why do you believe that sealing an office
21 would be part of the normal police investigation?

22 A I don't know, because I wasn't asked to do

1 it. If they thought there was a need for it to be,
2 that they would have done so.

3 Q So it's your testimony that you do not
4 believe you were asked to seal Mr. Foster's office?

5 A That's correct.

6 Q Did you ever speak to Mr. Burton at any
7 time about the question of sealing Mr. Foster's
8 office?

9 A I don't recall doing that.

10 Q Did you ever speak to Mr. Gergen about
11 sealing Mr. Foster's office?

12 A I don't recall that.

13 Q Did you ever speak to Mr. McLarty about
14 sealing Mr. Foster's office?

15 A I don't recall that.

16 Q Do you recall speaking to anyone ever
17 about sealing Mr. Foster's office?

18 A I do not.

19 Q Do you have any knowledge as to whether
20 Mr. McLarty asked that Mr. Foster's be sealed on the
21 night of his death?

22 A Do I have any knowledge of that?

1 Q Yes.

2 A No.

3 Q Do you have any knowledge about whether
4 anyone at the Park Police ever asked anyone at the
5 White House to seal Mr. Foster's office on the night
6 of his death?

7 A On the night of his death, I do not.

8 Q Did there come a time on the night of July
9 20th, when you again spoke to Ms. Thomasson?

10 A You mean after I called her?

11 Q Yes.

12 A Yes, she called me back.

13 Q Do you recall approximately when Ms.
14 Thomasson called you back?

15 A Later in the evening. It was probably
16 within a half hour and an hour after I called her.

17 Q And you were still at the Foster home when
18 she contacted you?

19 A Yes.

20 Q Do you know where Ms. Thomasson was at the
21 time when she contacted you?

22 A She was at the White House.

1 Q Do you know in what part of the White
2 House Ms. Thomasson was when she contacted you?

3 A I don't recall. I don't know that I was
4 told.

5 Q Do you have any understanding as to
6 whether she might have been in Mr. Foster's office
7 when she called you?

8 A She may have been.

9 Q What did Ms. Thomasson say to you in the
10 course of this conversation?

11 A She told me that there was not a note.

12 Q What was the basis for her statement that
13 there was not a note?

14 A She said she had looked around his office
15 and there was not a note.

16 Q Did she indicate in any way where she had
17 looked in Mr. Foster's office for a note?

18 A I don't recall.

19 Q Did Ms. Thomasson indicate to you whether
20 anyone else assisted her in attempting to look for a
21 note in Mr. Foster's office?

22 A She indicated to me that while she was

1 there, that Maggie Williams and Bernie Nussbaum were
2 there also.

3 Q Did Ms. Thomasson indicate to you how she
4 gained entry into Mr. Foster's office?

5 A No.

6 Q Do you know how Ms. Thomasson gained entry
7 into Mr. Foster's office?

8 A No.

9 Q Did Ms. Thomasson indicate to you whether
10 she was the first person to arrive at Mr. Foster's
11 office?

12 A I don't recall.

13 Q Did she say anything to you about the
14 actions that Ms. Williams took in Mr. Foster's office
15 on the night of his death?

16 A My recollection is that she was talking
17 about how devastated everyone was and she sat on the
18 sofa and commiserated.

19 Q Would that be with regard to both Mr.
20 Nussbaum and Ms. Williams?

21 A That's my recollection.

22 Q Did Ms. Thomasson indicate to you whether

1 Mr. Nussbaum took any action?

2 A She did not.

3 Q Did she indicate to you whether anyone
4 else had entered Mr. Foster's office on the night of
5 his death?

6 A Not that I recall.

7 Q Do you have any knowledge as to whether
8 any papers were removed from Mr. Foster's office on
9 the night of his death?

10 A No.

11 Q Did you ever ask Ms. Thomasson whether any
12 papers were removed from Mr. Foster's office?

13 A No.

14 Q Did you ever ask anyone whether any papers
15 were removed --

16 A No.

17 Q Let me just get the questions out.

18 -- removed from Mr. Foster's office on the
19 night of his death?

20 Your answer is no?

21 A My answer is no.

22 Q Did you speak to the President on the

1 night of Mr. Foster's death?

2 A I did.

3 Q Where did you speak to the President?

4 A At the Foster home

5 Q What was the nature of your conversation
6 with the President?

7 A It was not private, it was with people
8 around, just commiserations.

9 Q Did you ever speak to the First Lady on
10 the night of Mr. Foster's death?

11 A I did not.

12 Q Would it be fair to say that you had a
13 closer relationship with the President than the First
14 Lady?

15 A It would be.

16 MR. BEN-VENISTE: The syntax there is
17 interesting.

18 BY MR. GIUFFRA:

19 Q Do you recall when you arrived at the
20 White House on the morning of July 21st?

21 A The early morning. I don't remember
22 specifically.

1 Q Do you recall speaking to Mr. Nussbaum on
2 the morning after Mr. Foster's death?

3 A At some point, yes.

4 Q Do you recall when that was?

5 A Later in the morning.

6 Q What do you recall about your conversation
7 with Mr. Nussbaum?

8 A It had partly to do with a meeting with
9 Park Police and others.

10 Q Did you speak to Ms. Williams on the
11 morning of July 21st?

12 A I don't recall.

13 Q Did you speak with Ms. Thomasson on the
14 morning?

15 A Patsy Thomasson? Yes, I spoke with her
16 every morning. She was my deputy.

17 Q Do you recall any discussions you had with
18 Ms. Thomasson on the morning of July 21st?

19 A No, I don't recall specifically.

20 Q Did you speak to Mr. Hubbell on the
21 morning of July 21st?

22 A I don't recall.

1 Q Did you speak to Mr. Livingstone on the
2 morning of July 21st?

3 A My recollection is that, yes, that he said
4 that he was going back over to the house to
5 facilitate anything, the media, there were still
6 questions. I just think I had a conversation. I
7 don't remember the specific subject matter.

8 Q Do you recall the approximate time of the
9 conversation with Mr. Livingstone?

10 A No.

11 Q Was it by telephone or in person?

12 A I think he dropped by my office. I don't
13 recall specifically.

14 Q Do you know whether Mr. Livingstone
15 eventually went to the Foster home?

16 A That day?

17 Q Yes.

18 A I don't recall.

19 Q Do you know if Mr. Livingstone visited the
20 Counsel's suite on the morning of July 21st, 1993?

21 A I don't.

22 Q Do you know whether Mr. Livingstone

1 carried a box in the West Wing on the morning of July
2 21st, 1993?

3 A I don't know.

4 Q Did you attend the senior staff briefing
5 on the morning of July 21st, 1993?

6 A I don't recall that morning, the specifics
7 of that. If they had one, I probably did. But I
8 don't recall specifically.

9 Q Directing your attention to the Park
10 Police briefing, was that briefing held in your
11 office?

12 A Yes.

13 Q Who arranged for this briefing?

14 A I don't recall how the request came in or
15 where it came from.

16 Q Do you know why the briefing was scheduled
17 for your office?

18 A Basically as a convenience in the
19 facilitation because it's near the entrance to the
20 West Wing basement and there's a reception area
21 outside.

22 Q Do you recall the approximate time of this

1 meeting?

2 A It was in the morning.

3 Q And do you recall who attended the
4 briefing?

5 A I don't recall all the attendees. I
6 remember a representative from the Park Police, I
7 remember Mr. Nussbaum, Mr. Kennedy, I believe, and
8 Mr. Stephanopoulos. I don't recall the identity of
9 the others.

10 Q Do you recall if Mr. Burton attended?

11 A I don't recall but he may very well have.

12 Q Do you recall if Mr. Hubbell attended?

13 A I don't recall.

14 Q Do you recall if Mr. James Hamilton
15 attended?

16 A I don't recall.

17 Q What do you recall about the substance of
18 this briefing by the Park Police in your office on
19 the morning of July 21st, 1993?

20 A My recollection is pretty general in
21 nature, that it was more about the process of the
22 investigation, how things would proceed in the

1 investigation.

2 Q What do you recall the Park Police said
3 about the process of the investigation?

4 A I don't recall.

5 Q Do you recall whether they said anything
6 about approaching all death investigations as a
7 possible homicide?

8 A I don't recall.

9 Q Do you recall any discussion of the need
10 to coordinate the Park Police's activities with the
11 Department of Justice?

12 A I don't recall.

13 (Discussion off the record.)

14 BY MR. GIUFFRA:

15 Q Do you recall if Mr. Stephanopoulos said
16 that Mr. Foster's death should be investigated as it
17 would routinely and normally be investigated?

18 A I don't remember precisely that statement.
19 I know that Mr. Stephanopoulos was there I'm sure as
20 part of communications and politics, but essentially
21 this was Nussbaum's meeting. I was there just to
22 facilitate.

1 Q Why was it Nussbaum's meeting?

2 A Because most of the process, briefings and
3 directions and things were directed at him, and he
4 was the one that was the counsel.

5 Q Do you know whether Mr. McLarty had
6 directed that Mr. Nussbaum would be the responsible
7 White House official for coordinating the response to
8 the Park Police investigation?

9 A I don't know.

10 Q Do you recall any discussion at this
11 meeting of sealing Mr. Foster's office?

12 A Again, I think there was conversation,
13 there were specific discussions about the process of
14 the investigation, which I assume involved securing
15 the office.

16 Q Do you recall any discussion of securing
17 the office?

18 A Not specifically.

19 Q Do you know whether Mr. Nussbaum said
20 anything about posting a guard at the office?

21 A My vague recollection is there was that
22 discussion of posting a guard.

1 Q Do you recall whether there was any
2 discussion about the fact that the office had not
3 been sealed on the night of Mr. Foster's death?

4 A I do not recall.

5 Q Do you recall anything more about that
6 briefing other than what you've testified here today?

7 A No.

8 (Pause.)

9 Q Did you have any further contact with the
10 Park Police on July 21st that you recall?

11 A I don't recall.

12 Q Did you speak to Mr. Nussbaum at any time
13 on July 21st about the investigation of Mr. Foster's
14 death?

15 A I don't recall.

16 Q Did you speak to anyone at the White House
17 about the investigation into Mr. Foster's death on
18 July 21st?

19 A I don't recall.

20 Q Did you speak to anyone on July 22nd about
21 the investigation into Mr. Foster's death?

22 A I don't recall.

1 Q Do you recall any discussion on, either
2 July 21st or July 22nd, of the process for review of
3 documents in Mr. Foster's office?

4 A No. Again, my feeling, my general feeling
5 after the meeting with the Park Police on July 21st,
6 that it was off my radar screen. Any investigation,
7 that was Bernie's responsibility. It's off my radar
8 screen.

9 Q Did Bernie say anything to you about the
10 investigation?

11 A No, not that I recall.

12 Q Did you discuss the investigation with
13 anyone?

14 A Not that I recall.

15 Q Do you know whether Ms. Thomasson had any
16 role with regard to the investigation into Mr.
17 Foster's death?

18 A Not that I'm aware of.

19 Q You were the person at the White House in
20 charge of administrative matters. Did you have any
21 discussions with anyone about the documents that were
22 in Mr. Foster's office?

1 A Not that I recall.

2 Q Do you have any knowledge as to what
3 happened to the documents that were in Mr. Foster's
4 office after his death?

5 A I do not.

6 Q Do you know if any documents contained in
7 Mr. Foster's office were taken to the residence?

8 A I do not.

9 Q Do you know if the President or First Lady
10 ever reviewed any documents taken from Mr. Foster's
11 office?

12 A I do not.

13 Q When did you learn of the discovery of a
14 note in Mr. Foster's briefcase?

15 A I don't recall the precise time.

16 Q Did you learn it from press accounts or
17 from someone at the White House?

18 (Pause.)

19 A I don't recall.

20 Q In the days immediately after Mr. Foster's
21 death, was there a lot of discussion at the White
22 House as to why he might have killed himself?

58

1 A General, more why, yes, a lot of whys.
2 Yes.

3 Q Do you recall any discussion of some of
4 the reasons that were being put forward?

5 A No more than was speculated in the news
6 accounts.

7 Q Did you ever discuss the discovery of the
8 note in Mr. Foster's briefcase with Mr. Nussbaum?

9 A No.

10 Q Did you ever discuss the discovery of the
11 note with the First Lady?

12 A No.

13 Q Do you recall discussing the circumstances
14 in which this note was found with anyone?

15 A No.

16 Q Did you ever discuss the investigation
17 into Mr. Foster's death with Mr. Hubbell?

18 A I'm sorry, I didn't hear part of that
19 question.

20 MR. GIUFFRA: You can just read it back.
21 (Readback.)

22 THE WITNESS: No.

1 BY MR. GIUFFRA:

2 Q Do you know Susan Thomases?

3 A Yes.

4 Q Who is Susan Thomases?

5 A An attorney in New York was involved in
6 the campaign.

7 Q What was Ms. Thomases' role in the
8 campaign?

9 A She was an advisor.

10 Q Do you remember what kind of an advisor
11 she was?

12 A Political and, in the general election,
13 she did scheduling in advance. She had an actual --
14 she came and was director of scheduling in advance.

15 Q So she had a full time job on the
16 campaign?

17 A Yes, during the general election. But she
18 was involved in the primary election as a political
19 advisor.

20 Q Do you recall anything more about the role
21 that she played during the campaign?

22 A Scheduling in advance.

1 Q How about during the primary campaign?

2 A Just an advisor.

3 Q Was she involved in issues?

4 A Yes.

5 Q Do you remember some of the issues she was
6 involved in?

7 A No. She was just a political -- she
8 talked to the campaign manager, David Wilhelm, a lot.
9 I was not involved every day in the politics of the
10 campaign. Mine was more financial and
11 administrative.

12 Q Do you have any knowledge as to whether
13 Susan Thomases has ever worked on any legal matters
14 for the President or First Lady, personal legal
15 matters?

16 A I'm not aware.

17 Q Is Susan Thomases a close friend of the
18 First Lady as far as you know?

19 A I believe she is.

20 Q Is she a close friend of the President?

21 A I don't know.

22 (Pause.)

1 Q Do you recall the names of the persons --
2 Strike that.

3 When press accounts about Whitewater
4 Development Corporation arose during the 1992
5 presidential campaign, do you recall who on the
6 campaign was involved in responding to those
7 inquiries?

8 A Press accounts?

9 Q Press inquiries.

10 A On Whitewater?

11 Q Yes.

12 A I think Betsy Wright. It could have been
13 Betsy Wright or Jim Lyons.

14 Q Do you have any recollection as to whether
15 Ms. Thomases was involved in responding to such
16 inquiries?

17 A No, I don't recall.

18 Q Other than the conversations you've
19 testified to previously here today, did you have any
20 other conversations bearing on the handling of papers
21 in Mr. Foster's office?

22 A No.

1 MR. GIUFFRA: I don't have any further
2 questions.

3 MR. COBB: In response to that last
4 question, you said other than what you've testified
5 to today, did you have any other conversations with
6 regard to the handling of documents in the office.

7 I think he testified he never had any
8 conversations with regard to the handling of
9 documents in the office.

10 BY MR. GIUFFRA:

11 Q Is that your testimony that you never had
12 any conversations with anyone about the handling of
13 the documents in Mr. Foster's office?

14 A That is right, that's correct.

15 EXAMINATION

16 BY MR. BEN-VENISTE:

17 Q Mr. Watkins, my name is Richard Ben-
18 Veniste. I'm Chief Counsel for the minority.

19 Let me ask you about Patsy Thomasson for a
20 moment. You indicated that you did not know or did
21 not believe that Ms. Thomasson had a security
22 clearance as of July 20th, 1993.

1 Is that correct?

2 A That's correct.

3 Q Was there a problem or backlog with a
4 number of White House staffers not receiving or
5 processing their White House passes?

6 A As I recall, it was a matter of there had
7 been a backlog of processing the security badges, you
8 know, during the early phases of the Administration.
9 Then also, just the time spent in completing the
10 paper work.

11 Q So certain paper work had been delayed and
12 had fallen through the cracks?

13 A Yes.

14 Q Do you know who was responsible for
15 ensuring that this paper work be processed in a
16 timely way?

17 A I think it was Counsel's Office.

18 Q Was Mr. Livingstone involved in the
19 processing of that paper?

20 A Yes.

21 Q Is it correct, sir, that Ms. Thomasson, as
22 well as several others, ultimately received their

1 security clearances and the paper work was processed
2 when the delays came to light?

3 A That is correct. It's my understanding
4 that they all did.

5 Q Are you aware of any problem that Ms.
6 Thomasson had in connection with obtaining a security
7 clearance?

8 A None whatsoever other than completing the
9 paper work.

10 Q Let me direct your attention to the
11 evening of July 20th. Upon your arrival at the
12 Foster residence, I think you stated that at the
13 point that you and the Park Police officers arrived,
14 only the immediate family was at home; Mrs. Foster
15 and the children.

16 A I believe there were some friends of the
17 children there.

18 Q In terms of adults.

19 A Yes, that's my understanding.

20 Q And within short order, Mr. Hubbell
21 arrived and then Vincent Foster's sisters arrived?

22 A Well they arrived with Mr. Hubbell.

1 Q Both of them arrived with Mr. Hubbell?

2 A Yes.

3 Q Do you recall whether Congressman Anthony
4 was also present?

5 A He was present there at the house that
6 evening, yes.

7 Q Do you remember that the President arrived
8 at some point?

9 A Yes.

10 Q Do you recall any of the other individuals
11 who were there that evening?

12 A Yes. Mr. Gergen, McLarty, some friends,
13 other friends of the Foster's. I don't recall the
14 others.

15 Q Do you recall seeing Mr. Livingstone
16 outside at some point, parked in his car, sort of
17 hovering?

18 A I don't know if I recall seeing him in his
19 car. I recall seeing Livingstone there, yes.

20 Q Do you recall Senator Pryor coming at some
21 point?

22 A I believe so, yes. Yes, I do.

1 Q Could you describe the general atmosphere,
2 what was going on?

3 A It was just a very sad time. People were
4 very emotional, grief-struck.

5 Q Were you advised at some point that the
6 Park Police had not found any sort of note or writing
7 at the scene of the suicide, Fort Marcy Park?

8 A I believe so.

9 Q What do you recall about the general
10 discussion about a suicide note following that report
11 by the Park Police?

12 A I just think there was a general
13 discussion that they had not found anything, that we
14 couldn't understand it, and could we better
15 understand it if there was a note.

16 Q Do you recall whether Lisa Foster
17 participated in that conversation?

18 A She participated in the general
19 discussion. My recollection is that at some time
20 during the evening she was told that there was not a
21 note.

22 Q Do you recall whether you received word,

1 either directly from Lisa Foster, or indirectly from
2 someone else who had spoken to her, about whether she
3 had any interest in there being a search for a note?

4 A I don't recall.

5 Q In your conversation with Patsy Thomasson
6 when you first advised her that Mr. Foster had been
7 found, had been positively identified, and the Park
8 Police had advised you that no note had been found at
9 the scene, you suggested that she go to the office of
10 Mr. Foster in the West Wing and see whether he had
11 left a note there?

12 A That's correct.

13 Q Did you discuss that request with anyone
14 before you made it?

15 A As I recall, as a part of the general
16 discussion, I discussed it with Mr. McLarty.

17 Q I take it Mr. McLarty thought that would
18 be a good idea?

19 A Right. He concurred.

20 Q The reason why you selected Ms. Thomasson
21 was because she was your deputy?

22 A That's correct.

1 Q Was there any other reason?

2 A No.

3 Q I believe it's your recollection that
4 within an hour of the time when you first requested
5 that Ms. Thomasson undertake this assignment, she
6 advised you that she had been to the office and had
7 not found a note?

8 A That's correct.

9 Q Did she indicate where she had looked for
10 one?

11 A I don't recall specifically; just the
12 office, looked on his desk and the office.

13 Q So she said in substance, I've looked and
14 I haven't found anything, is that correct?

15 A That is correct.

16 Q Did she also indicate at that point that
17 Mr. Nussbaum and Maggie Williams had also been to the
18 office and that they were extremely distraught?

19 A That's correct.

20 Q Did she say anything by way of description
21 in terms of how distraught they were or what they
22 were doing?

1 A My recollection is that she said Maggie
2 Williams was just extremely distraught, boo-hooing.

3 Q By that, you mean crying?

4 A Crying.

5 Q Did she indicate anything about Mr.
6 Nussbaum?

7 A I don't recall.

8 Q Is it correct that Ms. Thomasson did not
9 indicate to you whether either Ms. Nussbaum or Ms.
10 Williams had assisted her in looking for a note?

11 A I don't recall her saying that they had
12 assisted her.

13 Q With respect to the questions Mr. Giuffra
14 asked you about whether there had been any requests
15 by the Park Police of you to seal Mr. Foster's
16 office, I believe you responded that you specifically
17 do not believe that such a request was made of you.
18 Is that correct?

19 A That is correct.

20 Q And that if such a request were made, you
21 believe you would have remembered it despite all of
22 the confusion that was going on and the emotion that

70

1 was being displayed at the Foster home that evening?

2 A I do.

3 Q You also volunteered that you thought it
4 might be normal police activity to seal an office in
5 a suicide investigation. I'd like to explore that
6 for a moment with you.

7 Have you ever been involved in a suicide
8 investigation before?

9 A No.

10 Q Did you have any particular experience in
11 working with law enforcement officers who might be
12 involved in the investigation of a suicide or
13 homicide?

14 A No.

15 Q Law enforcement procedure, I take it, is
16 not your area of expertise?

17 A No.

18 Q So in making the remark about the normal
19 police activity, I take it you have no real basis for
20 evaluating what might be normal in such a situation?

21 A I do not.

22 Q Your only point being that if such a

1 request was made of you, you would certainly take it
2 seriously and in proper consultation with others,
3 make a determination?

4 A That's correct.

5 (Pause.)

6 MR. BEN-VENISTE: I have nothing further.

7 MR. GIUFFRA: Thank you very much for
8 coming.

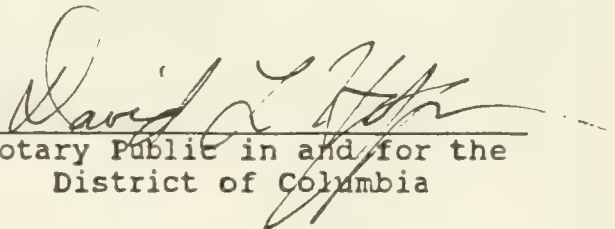
9 (Whereupon, at 11:15 a.m., Tuesday,
10 July 11, 1995, the taking of the deposition ceased.)
11

12 -----
13 W. DAVID WATKINS
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

72

I, David L. Hoffman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires 6/30/00

**DEPOSITION OF DAVID R. GERGEN
IN RE: S. RES. 120**

WEDNESDAY, JULY 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of DAVID R. GERGEN, called for examination pursuant to notice of deposition, at 10:25 a.m. in Room 538 of the Dirksen Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.
Majority Chief Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

ANDREW S. KRULWICH, Esq.
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|----------------------|-------------|
| David R. Gergen | |
| by Mr. Giuffra | 3 |
| by Mr. Kravitz | 121 |
| by Mr. Giuffra | 172 |

P R O C E E D I N G S

(10:25 a.m.)

Whereupon,

DAVID R. GERGEN

was called as a witness herein, and having been first
duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GIUFFRA:

Q Good morning, Mr. Gergen. My name is
Robert Giuffra, Chief Counsel of the Senate Banking
Committee.

To my left is Neal Kravitz who is the
principal Deputy Democratic Special Counsel.

A Good morning.

Q Please state your name for the record.

A Yes. David R. Gergen, G-E-R-G-E-N.

Q This is a deposition that is being
conducted pursuant to Senate Resolution 120, a copy
of which I have, if your counsel would like to review
it. This Resolution establishes a Special Committee
administered by the Banking Committee to conduct an
investigation involving Whitewater Development

4

Corporation and related matters.

Section 1.B.1 of Senate Resolution 120
authorizes an investigation and public hearings into
"whether improper conduct occurred regarding the way
in which White House officials handled documents in
the office of White House Deputy Counsel Vincent
Foster following his death."

Do you understand that that will be the
focus of your deposition here today?

A I do.

Q This is a deposition that's being
conducted in advance of public hearings that will
begin on July 18th, and you may be asked to testify
at those hearings.

The procedure today will be as follows:

We'll ask you a series of questions. I
will ask the questions first, then Mr. Kravitz.
You'll be testifying under oath.

If you don't understand a question, or if
a question is confusing, please let us know and we
will rephrase the question.

Do you understand that?

1 A Yes.

2 Q If at any time you need a break, also let
3 us know.

4 The Court Reporter will prepare a record
5 of the questions and answers.

6 This deposition will be treated as
7 Committee confidential until the commencement of the
8 hearings. It will not be disclosed to the public.
9 It will probably be part of the Committee record of
10 the proceedings of this phase of the hearings.

11 MR. KRULWICH: Which I assume we'll get a
12 copy of the deposition?

13 MR. GIUFFRA: Yes. Deposition transcripts
14 will be made available in a secure room at the
15 Senate, beginning on July 14th, and you can review
16 your deposition there.

17 We will also make a copy of the deposition
18 available to your counsel four days prior to any
19 testimony you might be asked to give. We'd ask that
20 you keep the deposition transcript confidential.

21 You have a right to be represented by
22 counsel. If counsel could state an appearance for

1 the record.

2 MR. KRULWICH: Yes. My name is Andrew
3 Krulwich of the law firm of Wiley, Rein & Fielding.

4 MR. GIUFFRA: Counsel may object to the
5 form of the questions and counsel may object on
6 grounds of privilege or relevance. There's a
7 procedure specified in the Resolution for responding
8 to such objections.

9 Any questions?

10 THE WITNESS: No, thank you.

11 BY MR. GIUFFRA:

12

13

14 Q Your present business address?

15 A My present business address is the Aspen
16 Institute, Suite 1070, 1330 New Hampshire Avenue,
17 Northwest, Washington, D.C.

18 Q The Committee has requested that the White
19 House provide documents regarding the handling of
20 documents in Mr. Foster's office following his death.

21 Insofar as you know, have all responsive
22 documents that you might have created or prepared,

1 been turned over to the Committee?

2 A I turned documents over to the White
3 House. I do not know whether the White House has
4 given those documents to the Committee.

5 Q That was prior to leaving the White House?

6 A Yes.

7 Q Your present position, sir?

8 A I'm currently a visiting professor at Duke
9 University in Durham, North Carolina, and I'm also a
10 senior fellow at the Aspen Institute here in
11 Washington, and in Aspen, Colorado.

12 Q On July 20, 1993, what was your position
13 at the White House?

14 A I was then counselor to the President.

15 Q What were your responsibilities as
16 counselor to the President?

17 A Well, I joined the White House staff in
18 June of 1993, shortly after Memorial Day, a few weeks
19 before July 20th. I had come there at the request of
20 the President and Chief of Staff, Mac McLarty, to
21 advise the President and to advise Mr. McLarty on
22 issues relating to governance.

1 I did not have any line responsibilities.

2 I did have, among the issues related to governance, I
3 was expected to have some oversight of the
4 communications operations at the White House.

5 Q Did Mr. Gearan report to you?

6 A Mr. Gearan had been Deputy Chief of Staff.
7 He was, after consultations, I recommended that he
8 become Communications Director. I do not know if
9 that occurred or not, but he was sitting, at the time
10 of July 20th, in the office of Communications
11 Director of the former Press Secretary's office,
12 essentially in the Press Secretary's office at the
13 White House.

14 Q What was the location of your office in
15 the White House?

16 A At that time, when I came to the White
17 House, they were rather cramped with people. I said,
18 as far as I was concerned, all I needed was a
19 telephone and a desk, and that's what I wound up
20 getting. I was sitting at that time, I was sitting
21 in the former barbershop, which was in the basement
22 of the West Wing of the White House.

1 Q Do you recall your office telephone
2 number?

3 A I don't. 456- I'm sorry. I've had a
4 number of White House telephone numbers over the
5 years. This was 4353, or something like that. I'm
6 sorry about that.

7 Q We can check with the White House.

8 A Sure.

9 Q Did you attend senior staff meetings?

10 A I did.

11 Q These were the meetings that were held
12 every morning in the Roosevelt Room?

13 A Yes. They were held at 8:00 o'clock, I
14 think.

15 Q And I correct that you reported directly
16 to the President?

17 A I had a reporting relationship to the
18 President and Mr. McLarty. It was a dual reporting
19 relationship.

20 Q What was the nature of your relationship
21 with Vincent Foster?

22 A Well, as I say, I'd only arrived at the

10

1 White House in June. I did not know Mr. Foster at
2 the time that I came there. I had some contact with
3 him, which I'd be happy to talk about.

4 Q Why don't you.

5 A The first memory of contact with him came
6 in June of 1993, when I got a call from Robert
7 Bartley, the Editor of the Wall Street Journal. He
8 said that the Journal had been trying to get
9 photographs of Mr. Foster and Mr. William Kennedy,
10 both of who worked in the Rose Law Firm in Arkansas,
11 because they were writing editorials about them, and
12 that the White House had not provided those
13 photographs.

14 He felt that the White House was dragging
15 its heels on that request, would I look into it,
16 which I did.

17 I called Mr. Kennedy and I talked to Mr.
18 Foster I think by phone, I can't remember, and
19 recommended to both of them that they provide
20 photographs, which they did.

21 Subsequently, the Journal which had been
22 writing what can only be called unfavorable

1 editorials about Mr. Foster and Mr. Kennedy and the
2 Rose Law Firm, subsequently ran line drawings of Mr.
3 Foster and Mr. Kennedy, so I sort of had a sense that
4 Mr. Foster was probably not overwhelmingly happy with
5 my advice.

6 It didn't seem to end the hammering that
7 he felt he was getting at the time from the Journal,
8 but I still think it was the right thing to do.

9 Q Do you recall any others?

10 A Yes. I also had contact with him with
11 regard to -- and I don't remember the exact timing of
12 this, but in June or July -- that there was a vacancy
13 on the Supreme Court. I was asked by the President
14 to attend all the meetings or the essential meetings
15 on the selection of a replacement.

16 Mr. Foster was doing some background
17 checks on these potential nominees to the Court. In
18 that context, I remember having a couple of
19 conversations with him about Stephen Breyer, because
20 he was doing a lot of the background checking on
21 that.

22 I think I talked to him about the person

1 who was nominated, Ruth Ginsberg.

2 Q Do you recall any other contacts with Mr.
3 Foster?

4 A I have a recollection of passing him on
5 the stairwell the day, I think the day that he died.
6 I believe it was that morning that Justice Ginsberg
7 was sworn in. There was a Rose Garden ceremony.

8 I may have the wrong date.

9 Q I think maybe FBI Director Freeh --

10 A Freeh, yes, that was a subsequent date. I
11 remember around the time of the Rose Garden ceremony,
12 I have a memory of passing him on the stairwell and
13 just saying, hi, how are you.

14 Q What was your understanding of Vincent
15 Foster's areas of responsibility as Deputy White
16 House Counsel?

17 A I did not have one.

18 Q As of July 20, 1993, did you have any
19 understanding of Mr. Foster's role with regard to the
20 President's financial disclosure?

21 A Not to my memory.

22 I was, as I say, relatively new to the

1 White House and at the time I'd been there, for the
2 six or seven weeks I'd been there, we'd also been to
3 Tokyo for the Economic Summit, which had taken a fair
4 amount of my time, so I really hadn't paid much
5 attention to Mr. Foster's activities.

6 Q And you would have had no understanding as
7 to whether he was involved in personal legal matters
8 for the President and First Lady?

9 A I did not know that.

10 Q As of July 20th, 1993, had you ever
11 discussed Whitewater with Mr. Foster?

12 A No.

13 Q Did you ever discuss Whitewater with the
14 President?

15 A No.

16 Q This would be as of the time of Mr.
17 Foster's death.

18 A I cannot swear to that that he never
19 mentioned it to me or not.

20 MR. KRULWICH: Just to be clear, you're
21 talking about the President or Mr. Foster?

22 THE WITNESS: I thought he'd gone on to

1 the present and the President.

2 MR. KRULWICH: Okay.

3 THE WITNESS: I can't recall a
4 conversation with the President about it. But I've
5 had one or two conversations over the time I was
6 there, and I can't remember when they took place. I
7 cannot swear for a fact. But I've never had, I don't
8 remember any conversation prior to July 20th.

9 BY MR. GIUFFRA:

10 Q Did you ever discuss, do you recall prior
11 to July 20th, 1993, ever discussing Whitewater with
12 the First Lady?

13 A No.

14 Q Maggie Williams?

15 A No.

16 Q What was your first knowledge of
17 Whitewater?

18 A My first knowledge of Whitewater,
19 questions surrounding Whitewater, when they came into
20 contact with the 1992 campaign and my knowledge of
21 that. At the time I was a journalist and of course
22 there were articles in the press.

1 Q Do you recall any discussion of Whitewater
2 as of the time of Mr. Foster's death?

3 A No.

4 Q Directing your attention to July 20th,
5 1993, when did you learn of Mr. Foster's death?

6 A I learned of Mr. Foster's death that
7 evening, I think roughly between 9:00 and 10:00
8 o'clock. I may have been a little off on the time.

9 Q Where were you at the time?

10 A I was at a private dinner in Washington.

11 Q Who contacted you about Mr. Foster's
12 death?

13 A I was contacted by Jody Greenstone, who
14 was my assistant, G-R-E-E-N-S-T-O-N-E. She called me
15 and said that she had received a call from Mark
16 Gearan at the White House, asking did she know where
17 I was. I did not carry a beeper at that time. She
18 knew I was at the dinner.

19 Q Did you make any phone calls from the
20 dinner?

21 A Yes. She called me and said Mark Gearan
22 was looking for me. I think at that point, I called

1 him at his office. I can't remember whether he
2 called me or I called him, but we had an exchange of
3 perhaps two or three phone calls.

4 Q Did you have a portable phone, a cellular?

5 A No, it was on the phone in the private
6 home.

7 Q Do you recall anything about the substance
8 of these conversations with Mr. Gearan?

9 A Yes. He informed me that Mr. Foster's
10 body had been found by the Park Police and he wanted
11 to talk to me about -- he then explained to me that
12 he and Mr. Stephanopoulos and perhaps one or two
13 others had been with the President during a Larry
14 King taping that evening at the White House, that
15 they ended the taping a bit earlier than the
16 President intended in order to tell him about the
17 death.

18 And I asked him whether there'd been any
19 note found or any explanation for the death.

20 He said it was an apparent suicide. He
21 said that, no, no note had been found, and he was
22 asking me how I thought they ought to respond to it

1 in terms of the public side of this.

2 I also asked him where the President was,
3 where he'd gone.

4 Q What was your advice to Mr. Gearan as to
5 how the White House should respond to the public side
6 of Mr. Foster's death?

7 A I thought it ought to go out that night.
8 I thought it was important to disclose it before the
9 first edition of the Post if we could possibly do
10 that. The President would probably be in press
11 already, but it was important that we go forward with
12 it.

13 Q Was there any discussion of not disclosing
14 it in fact?

15 A No, I think it was just a matter of
16 timing, to make sure it would go out that night, or
17 in the morning. It was obvious it was going to be
18 disclosed.

19 Q Was there any discussion of not doing it
20 that evening?

21 A No. But there was a question, should we
22 wait on this. The President, he told me, I think at

1 that time, I know in one of those conversations, he
2 told me the President was at the home of the widow,
3 and you know, should we just sort of wait until he
4 gets back and that sort of stuff.

5 I said, no, let's go ahead and get it. In
6 fact, I told a couple of guests there at the dinner.
7 The dinner was at the home of the Bradlee's, Sally
8 and Ben Bradlee, and there were a number of people
9 there from the Washington Post.

10 Q Do you recall anything else about the
11 substance of your conversations with Mr. Gearan?

12 A No, they were fairly brief. It was a
13 question of, God, does anybody know why, does anybody
14 know what happened.

15 Since I was not close to Mr. Foster, it
16 was more of a shock, but I was not going through deep
17 grieving because I didn't know him that well, but it
18 was really a question of how do we proceed on the
19 public side of this.

20 Q Did there come a time when you left the
21 dinner party?

22 A Yes. I went back into the dinner, it was

1 a dinner for about 40 or 50 people. There were a
2 number of people there. It was a bipartisan affair.
3 But Mickey Kantor was there, James Carville was
4 there, and I asked both of them to join me on the
5 back porch of the home to talk for a few minutes.

6 I really wanted to know, I wanted to tell
7 them it had happened, and ask them how they thought
8 it would affect the President, which was my primary
9 concern at the moment. And if so, what sort of
10 reactions they thought he would have, since they knew
11 him a lot better than I did.

12 And we talked for a few minutes about what
13 might have caused him to take his life, since I told
14 them I thought it sounded like a suicide, given the
15 fact that they'd found a gun by his body.

16 I talked to Gearan again, and also to
17 Vernon Jordan, who was there, and Les Aspin started
18 to get into the act. He also was there. And Les and
19 I talked about the whole thing. Les was very
20 interested in the question as well.

21 Then I left the dinner shortly into the
22 desert period, and I told a couple of people at the

1 Post because I knew it was going to be coming our
2 shortly. Then I left with Mr. Jordan.

3 Q Did you go to the White House?

4 A No. We were in Georgetown about four or
5 five blocks from the Foster home. My wife went home
6 in our car, and I went with Mr. Jordan to the Foster
7 home. We went to find the President.

8 Q About what time did you arrive at the
9 Foster home?

10 A I can't remember exactly. I think it was
11 around 11:00 o'clock.

12 Q Do you recall who was there?

13 A I only went inside briefly because I did
14 not know many of the people there. I know Senator
15 Pryor was there. I believe Mr. Hubbell was there,
16 and of course, Mrs. Foster was there. There must
17 have been 15 people in the living room, and the
18 President was there obviously.

19 Q How would you describe the scene at the
20 Foster home?

21 A A lot of grief, a lot of crying. I went
22 there because I was very concerned about the

1 President's reaction in response to this, in the
2 sense that he'd had a rough few months, opening
3 months, and I was concerned less about Mr. Foster,
4 although obviously I was very sorry what had happened
5 to him, but I was concerned that, as a new President,
6 as a young President, he came to the city, and to
7 have an aide take his life in the midst of Washington
8 might have a very upsetting affect on him personally,
9 and I just don't know how it affected his governing,
10 which was, as I say, my primary concern.

11 Mr. McLarty was also there.

12 Q Do you recall if Mr. Lindsey was present?

13 A I do not recall if he was there. I do not
14 recall seeing him. He may have been, but I just
15 don't recall.

16 Q Do you know a man named David Watkins?

17 A I do know David Watkins. Now that you
18 mention his name, I think he may have been there. I
19 did not recall it prior to your mentioning it.

20 Q Do you recall seeing any police officers
21 present?

22 A I don't recall police officers in the

1 room. There was of course the Secret Service outside
2 the house. It was on a narrow street in Georgetown.

3 Q Did you make any telephone calls from the
4 Foster residence?

5 A No.

6 Q Do you recall any discussion during the
7 time you were at the Foster residence of the need to
8 look at Mr. Foster's office for a possible suicide
9 note?

10 A No.

11 Q Do you recall any discussion, while you
12 were at the Foster residence, with respect to the
13 need to seal Mr. Foster's office?

14 A No.

15 Q Do you recall contacting Mark Gearan at
16 any point on the evening of the 20th, to ask him
17 whether Mr. Foster's White House office was sealed?

18 MR. KRULWICH: I'm sorry, that was at any
19 time? You're not limiting it to at the Foster's?

20 MR. GIUFFRA: Any time.

21 THE WITNESS: Yes, I did. That was
22 subsequent. If you'd like me to fill in the

1 intervening.

2 BY MR. GIUFFRA:

3 Q Just keep going.

4 A It might be easier.

5 MR. KRULWICH: Let's respond to the
6 question.

7 THE WITNESS: Sure, I appreciate that.

8 I spent most of my time at the Foster home
9 just sort of in the doorway or in the little front
10 yard talking to Vern Jordan, and I talked to a couple
11 of the relatives, while the President was consulting
12 the family, because I didn't know people there very
13 well. It just didn't seem to be an appropriate place
14 for me to be.

15 I talked to his widow briefly, and I
16 talked to the President and consoled him the best I
17 could, and then essentially got up and went out the
18 front door and waited for him.

19 We then had some sort of notice that the
20 press might be arriving. By this time of course it
21 was out, and I remember suggesting to Mac and Vernon,
22 you just ought to leave. This is going to become,

24

1 has the potential to become a big circus here, and
2 he's not going to feel comfortable in that
3 environment. He just ought to get out of here.

4 So there may have been some discussion
5 about how to handle the press when they came. I
6 don't remember that very well, but I think there was
7 some concern on Lisa Foster's part about how to
8 handle the press. I just said she didn't have to
9 talk to them, as I recall, but you know, they're
10 obviously going to come by and take pictures of the
11 home, and of course, there'd probably be a stakeout.

12 So at that point, the President did decide
13 to leave. He stayed for another ten or 15 minutes,
14 and decided to leave, and he and Mac got into the
15 car, and as they were getting in, he invited Vernon
16 Jordan and me to come with him, to return to the
17 White House with him, so we followed along in Vern's
18 car.

19 MR. KRULWICH: I think we're at the point
20 now, let's respond to questions.

21 THE WITNESS: Sure, okay. I'm just trying
22 to fill in the time.

1 MR. GIUFFRA: No problem.

2 BY MR. GIUFFRA:

3 Q You did not get into Mr. McLarty's car?

4 A As I recall, I went back in Mr. Jordan's
5 car, and he went with the President although he may
6 have had a separate car. I can't recall if he was in
7 the President's car or not. I do recall going back
8 with Mr. Jordan.

9 Q You then went to the West Wing?

10 A No, we did not go to the West Wing.

11 Q You went to the White House residence?

12 A Yes.

13 Q And?

14 A We drove, there's a front gate there. You
15 can no longer drive in there, but we went in through
16 the north side. You could drive right down to the
17 residence.

18 Q Okay. Is this on Pennsylvania Avenue?

19 A It's on Pennsylvania Avenue.

20 Q Where did you go once you arrived at the
21 residence?

22 A We went directly up into the residence

1 into a kitchen on the second floor.

2 Q Who was present in the kitchen on the
3 second floor?

4 A The President, Mr. McLarty, Vernon Jordan,
5 and me at that time.

6 Q Do you recall any of the subject matters
7 that were discussed while you were in the kitchen at
8 the residence of the White House?

9 A I can't remember everything that was said.
10 We got there roughly midnight. I don't have the
11 exact times on this. I wasn't checking on that, but
12 we got there late in the evening, and we went in and
13 most of the time was spent in the kitchen.

14 The President was grieving over the loss
15 of Mr. Foster. He spent a lot of time reminiscing
16 about Arkansas and about growing up with Vince
17 Foster, what he was like, stories from Arkansas days.

18 Q Do you recall whether the President had
19 contacted the First Lady?

20 A Yes. The President left the kitchen. I
21 do not know when he first contacted her. While I was
22 there, he left the kitchen. There's a little hallway

1 or pantry and there's a larger sort of living room
2 area, and he went out to that living room area for
3 two or three different conversations I believe with
4 her. I know of at least one but I thought there were
5 two or three conversations with her.

6 Q You have no knowledge of the substance of
7 those conversations?

8 A I do not. They were mostly about --

9 MR. KRULWICH: Well, if you don't know.

10 THE WITNESS: I don't have any direct
11 knowledge. I'm just saying, based on what the
12 President said. That's what I'm just telling you.

13 BY MR. GIUFFRA:

14 Q What was your impression as to the
15 substance?

16 A I wasn't obviously a party to those calls,
17 but I thought that they were mostly about two things.

18
19 One was the mutually shared grieving, and
20 a second issue, which were discussing in the kitchen,
21 in addition to the reminiscing, we were discussing
22 what he should do with his public schedule the next

1 day.

2 Should he continue with his public
3 schedule, should he cancel the schedule for the next
4 two or three days, would she be coming back directly.
5 Questions of that sort.

6 Q During the time you were in the kitchen at
7 the White House residence, did the subject of sealing
8 Mr. Foster's office come up?

9 A It did.

10 Q What do you recall were the circumstances
11 when the subject of sealing Mr. Foster's office came
12 up?

13 A By way of context, I had been talking to
14 Mr. Gearan, as you know, from the dinner. When I got
15 back up to the residence and I was in the kitchen, I
16 called him, or he called me to tell if we were there.
17 I think I called him to tell him we were there and
18 what was happening, to sort of fill him in from the
19 other perspective.

20 He, I believe, at least that's where I
21 reached him, I reached him in his office. Whether he
22 left or was in and out of his office, I can't say,

1 but I then told him about that.

2 He told me what had happened on the press
3 side, what was going on.

4 We got into, we had two or three, perhaps
5 more conversations by phone over the course of the
6 next hour plus.

7 Q So this would have been between 12:00 and
8 1:00 o'clock?

9 A Approximately. Again, please don't hold
10 me to the exact time because I don't know.

11 Q But rather late in the evening?

12 A Late in the evening.

13 I was then relaying to Mac McLarty sort of
14 keeping him posted on the Gearan front in effect. In
15 that context, Mac and I discussed, and it was a brief
16 discussion, discussed the sealing of the office. I
17 don't know whether he raised it or I raised it, but I
18 raised it with Marc, and said, Marc, has the office
19 been sealed, and he said, let me check, as I recall.

20 I don't know whether he then put me on
21 hold or whether he talked to me in a subsequent
22 conversation. I do know there was a pause, so that

30

1 he was able to check on it.

2 He then came back to me and said, yes, the
3 office has been sealed.

4 Q Approximately how many minutes elapsed
5 between the time you first raised the question of
6 sealing the office and the confirmation that the
7 office had been sealed?

8 A I think it was rather brief, but I can't
9 swear to the number of minutes. I think it was a
10 matter of several minutes.

11 Q With regard to your conversation with Mr.
12 McLarty, do you recall anything more about why the
13 subject of sealing the office arose?

14 A This was in the context of I think it's
15 important to understand that most of our
16 conversations, in fact the great bulk of our
17 conversation was about why Mr. Foster might have
18 taken his life, and there was real grief about that,
19 and also about what the President would do the next
20 day or two.

21 The question of the office was very
22 secondary in those discussions, and it was at that

1 time, what we knew was that there was no note, at
2 least no note had been found so far. And that the
3 sealing was more in the nature of a precaution so
4 that if there was as note, it could be found.

5 Q Do you recall any discussion about the
6 possibility that Mr. Foster might be the victim of
7 extortion of any sort?

8 A I don't recall that conversation.

9 Q Did Mr. McLarty, at any point during the
10 evening, indicate that there'd been a request by law
11 enforcement officers to seal the office?

12 A He did not. I was not aware of any
13 request by law enforcement officers.

14 Q When Mr. Gearan reported back to you that
15 the office had been sealed, did he indicate the basis
16 for his confirmation that the office had been sealed?

17 A My memory on this is vague. He left with
18 me the impression that he had been talking to Roy
19 Neel, who was the Deputy Chief of Staff, but he had
20 told me in the course of the conversation that people
21 were in and out of the office.

22 Q Was this somebody from the Deputy Chief of

1 Staff's office?

2 A Yes, that was the impression I had, but I
3 may have misremembered that particular as to who it
4 was. I just don't have a very good --

5 Q Did he mention Mr. Burton, Gil Burton?

6 A He could have, but I don't remember. I
7 was more focused in my memory on whether it was
8 sealed or not, as opposed to sort of who may have
9 told him.

10 Q Did he say anything more to you about the
11 sealing of the office?

12 A Well, he said that there were, that no
13 note had been found in the office. He said that a
14 decision had been made -- I don't know by whom --
15 already in the course of the evening to secure the
16 material that was in the wastepaper basket in Mr.
17 Foster's office, and that that material had been
18 placed in Roy Neel's office, the Deputy Chief of
19 Staff's Office on the first floor.

20 He also said they had decided that there
21 may have been material in the burn bag which I
22 understood, I cannot say for absolute certain, but I

1 understood that the burn bag had been previously
2 taken out of the office earlier in the day and the
3 contents very likely had been shredded and
4 intermingled with the shreds of other burn bags
5 around the White House complex.

6 And there had been a decision, up to that
7 point, to not pursue the material in the burn bag
8 because it was already intermingled.

9 And I reported both of those things to Mr.
10 McLarty.

11 Q What was his response?

12 A He took it aboard.

13 Q With regard to your statement that no note
14 was found in the office, did Mr. Gearan indicate why
15 he indicated no note had been found in the office?

16 A No, he just said that people had checked.

17 Q Did he say which people had checked?

18 A I don't recall him saying that. I think
19 he may have said Mr. Nussbaum checked, but I don't
20 recall.

21 Q With regard to the decision to secure the
22 material in the wastepaper basket, did he say

1 anything more about the facts surrounding that?

2 A No. I assumed, well, I don't know,
3 somehow the name Mr. Neel, obviously because it was
4 in Mr. Neel's office, it was associated in my mind
5 that that must have been a decision Mr. Neel took. I
6 have no firsthand knowledge of that.

7 Q Did he indicate to you who had made the
8 decision not to preserve the material that might have
9 been in the burn bag?

10 A No, he did not that I recall.

11 Q Did you have any further conversations on
12 the evening of July 20th, having anything to do with
13 Mr. Foster's office that you can recall?

14 A Not to my knowledge. I specifically --
15 well, it was only through later reports that I saw in
16 the press that I learned that a variety of people had
17 been in that office. That did not come up in my
18 conversations with Mr. Gearan. It was not part of
19 our conversations with the President.

20 Q So it would be your testimony that you
21 only learned that persons had entered Mr. Foster's
22 office from press accounts?

1 A Well, I knew somebody had been in there
2 because they said they hadn't found a note. It was
3 through subsequent accounts that I learned, and I
4 don't even know these for a fact. I've read, in
5 various accounts, that Maggie Williams and Patsy
6 Thomasson were also over there. I did not know that
7 at the time.

8 Q Have you ever discussed with Mr. Nussbaum
9 whether he entered Mr. Foster's office on the night
10 of Mr. Foster's death?

11 A I can't recall that conversation where we
12 may have discussed that.

13 Q Have you ever discussed with Maggie
14 Williams whether she entered Mr. Foster's office on
15 the night of his death?

16 A It's conceivable we discussed it long
17 after the fact, but I can't recall it.

18 Q Do you recall any conversations with
19 regard to whether Ms. Thomasson entered Mr. Foster's
20 office that night?

21 A I'm virtually certain I did not talk to
22 Ms. Thomasson about it.

1 Q Do you have any knowledge as to whether
2 any papers were removed from Mr. Foster's office on
3 the night of his death?

4 A I have no knowledge with regard to that.

5 Let me add, I did not go to Mr. Foster's
6 office on the night of his death.

7 Q You were never in the West Wing on the
8 night of Mr. Foster's death?

9 A Well, I've tried to think about that,
10 because I had to go home. My wife had taken the car.
11 As I recall, I called the White House car. I know
12 Mr. Jordan didn't take me home. I remember going
13 down, when we left, I think I left, I sort of thought
14 I walked around the front of the West Wing and didn't
15 go in it, but I cannot swear I didn't go through the
16 basement of the West Wing. I did not go to the
17 second floor of the White House, nor did I go to the
18 first floor.

19 Q Have you heard any conversations with
20 anyone, other than what you've testified here to
21 today, with regard to activities in Mr. Foster's --
22 Strike that.

1 With regard to activities in the West Wing
2 on the night of Mr. Foster's death?

3 A I'm sorry, say that again.

4 MR. GIUFFRA: Strike that.

5 BY MR. GIUFFRA:

6 Q Have you ever spoken to anyone at the
7 White House with regard to activities that occurred
8 on the night of Mr. Foster's death, other than those
9 conversations and discussions you've already
10 testified to here today?

11 A Well, I certainly, with all the publicity
12 that surrounded the subject later, there were
13 conversations later about what happened, and I did
14 have conversations, for example, with Joel Klein, who
15 subsequently became the Deputy Counsel to the White
16 House. I did have discussions with him.

17 And I think I had discussions with other
18 individuals but they were all in the nature of
19 speculation.

20 I do not know, I have no firsthand
21 knowledge, nor do I have any memory of anyone
22 explaining to me what happened that night.

1 Q When do you recall arriving at the White
2 House on July 21st?

3 A Could I add one other point here?

4 I don't want the record to be -- perhaps I
5 should reflect on this -- in the course of the
6 conversations on the night of the 20th, I did have,
7 at one point when the President was talking to the
8 First Lady, I came out and spoke to her briefly in
9 the living room. I spoke to her only to console her
10 and talk to her about how the President was doing.
11 She wanted to know how the President was doing. I
12 don't remember whether she asked to speak to me. I
13 can't remember that, but I did have a brief
14 conversation with her. But that was the only thing
15 we talked about.

16 Q Do you recall while you were in the
17 kitchen of the residence whether anybody spoke to Mr.
18 Nussbaum?

19 A I have no memory of that and I should say
20 that I do not know, when I was relating things to
21 Mac, about my conversation with Gearan, about the
22 sealing of the office, I do not know whether the

1 President was in the room at the time or not, because
2 he was in and out, talking to the First Lady.

3 Q Do you know whether Mr. McLarty ever said
4 anything to the President with regard to sealing the
5 office?

6 A I have no memory of that.

7 Q Do you have any memory of the President
8 ever asking whether the office was sealed?

9 A No.

10 Q Do you have any memory of the President
11 ever asking whether a note was found in Mr. Foster's
12 office?

13 A No. I think at that time it was a given
14 that there was just no note found, but I can't
15 remember any further discussions.

16 Q Just to be sure the record's clear, to you
17 recall any conversations from the Foster home made to
18 Mr. Nussbaum, overhearing any conversations?

19 A No.

20 Q To Ms. Williams?

21 A No.

22 Q To Ms. Thomasson?

1 A No.

2 Q Directing your attention to July 21st,
3 1993, do you recall when you arrived at the White
4 House?

5 A That was the next morning?

6 Q Yes.

7 A I think I came in for the senior staff
8 meeting. I can't be absolutely certain what time I
9 arrived.

10 Q Do you recall attending the senior staff
11 briefing?

12 A I think I did.

13 Q Do you recall any discussion at the senior
14 staff briefing with regard to the need to seal Mr.
15 Foster's office?

16 A I do not recall that.

17 Q Do you recall any discussion at the senior
18 staff meeting of the law enforcement investigation
19 into Mr. Foster's death?

20 A I do not recall that. It is possible it
21 was said that there would be something, but I don't
22 recall that. I was not present at any meeting. I

1 don't recall ever being in any discussion that day,
2 so that would include the senior staff meeting, about
3 anything more than saying that the Park Police would
4 be looking into it. I don't recall any further
5 discussion about how do we handle, what do we do,
6 that sort of thing.

7 Q Do you know who Craig Livingstone is?

8 A I don't know Craig Livingstone. I'm sure
9 if he came in the door and told me he was Craig
10 Livingstone, I would recognize him, but I'm sorry, I
11 just don't know him.

12 Q Do you recall anyone carrying a box in the
13 West Wing on the morning of July 21st?

14 A No.

15 Q Do you have any knowledge of a briefing
16 that the Park Police held in Mr. Watkins' office on
17 the morning of July 21st?

18 A I do not have any knowledge.

19 Q Did you visit the White House Counsel's
20 Office at any time on July 21st?

21 A To the best of my knowledge, I did not. I
22 only say that because I'd never been in Vince

1 Foster's office and had there been a meeting there, I
2 think I probably would have poked my head in, but I
3 have no memory of it.

4 I was focused on July 21st on encouraging
5 the President to hold a staff meeting of the White
6 House staff to talk to them about what had happened.
7 I thought it was important for the morale of the
8 staff, and I was also focused on his public
9 presentations to the press.

10 Q Do you recall any discussions you might
11 have had with Mr. Nussbaum on the 21st?

12 A I do not recall those. Mr. Nussbaum never
13 sought my advice about how he should deal with the
14 Park Police.

15 Q Did you ever call to find out whether Mr.
16 Foster's had in fact been sealed on the night of the
17 20th?

18 A I did not, after the assurance that was
19 given by Mr. Gearan. I trust that the assurance was
20 valid. And I was also not, as I mentioned earlier, I
21 had no line responsibility, so I didn't -- it was not
22 the kind of thing that I would normally go

1 doublecheck on somebody.

2 Q Did there come a time when you
3 subsequently learned that the office had not been
4 sealed on the night of July 20th?

5 A There did come a time.

6 Q When was that?

7 A I can't remember. It was in the course of
8 -- I can't remember whether I read it in the press,
9 or if there was speculation about it, scuttlebutt in
10 the hallways. I can't remember which way I learned
11 it.

12 Q Did you ever try to ascertain why the
13 office had not been sealed on the night of the 20th?

14 A No. Because I knew by that time, of
15 course, there was an investigation underway and I
16 thought it was inappropriate for me to asking those
17 kind of questions.

18 Q Do you recall speaking with Maggie
19 Williams on the 21st?

20 A I don't. A review of my telephone logs
21 shows that she called me. I'm sure I did speak to
22 her because she was very concerned about both the

1 First Lady and the President, the grief and the
2 trauma of the occasion, you know. She occasionally
3 looked to me on issues of that sort for, you know,
4 you're the old guy around here. How do we deal with
5 things like this.

6 Q Do you recall anything more about the
7 substance of the conversation you might have had?

8 A I don't recall any substance at all of
9 that conversation.

10 Q Directing your attention to July 22nd,
11 which is a Thursday, two days after Mr. Foster's
12 death, do you have any knowledge as to whether Mr.
13 Nussbaum reviewed any documents in Mr. Foster's
14 office in the presence of law enforcement officials?

15 A I only know what I've read and again this
16 was speculation from the White House staff. I did
17 not know anything that took place about the process.

18 Q So you don't recall any discussion with
19 regard to how that review would be conducted?

20 A No. I was not party. If there were
21 meetings to discuss how to handle it, I was not a
22 party to them.

1 Q Do you have any knowledge with regard to
2 what happened to the documents contained in Mr.
3 Foster's office after this review?

4 MR. KRULWICH: Is that knowledge he has
5 now?

6 MR. GIUFFRA: Other than from press
7 accounts?

8 THE WITNESS: No. It's again only what
9 I've learned subsequent to the press accounts and
10 again through speculation, commentary, White House
11 staff commentary.

12 BY MR. GIUFFRA:

13 Q Have you ever had any discussions with Mr.
14 Nussbaum with regard to the handling of the papers in
15 Mr. Foster's office?

16 A I subsequently had discussions with him
17 about the handling of the scraps of paper that were
18 found that constituted the note.

19 MR. KRULWICH: Let me just interrupt for a
20 second. He's asking if you had any conversations
21 with Nussbaum.

22 THE WITNESS: Let me be more precise,

1 thank you.

2 The following week, as you know, the note
3 was found on a Monday, and on Tuesday I was in
4 meetings which Mr. Nussbaum attended, in which there
5 were conversations about how to deal with the note.
6 Those were the discussions I had about them.

7 BY MR. GIUFFRA:

8 Q Let's just go right to that.

9 When did you learn of the discovery of
10 scraps of paper at the bottom of Mr. Foster's
11 briefcase?

12 A I learned of it for the first time on
13 Monday, the 26th of July, late in the day.

14 Q Where were you?

15 A I was in Chicago.

16 Q Were you with the President in Chicago?

17 A I was not with him at the time I learned.

18 I'd gone with the Presidential party and the
19 President to Chicago that morning.

20 He went out for a conference. At the time
21 I learned about it, he was in a roundtable discussion
22 downstairs in the hotel. I can't remember the name

1 of the hotel. I had left the meeting and was
2 upstairs in the Tower Room which was a block of rooms
3 for the White House staff.

4 Q Do you recall who advised you of the
5 discovery of the scraps of paper in Mr. Foster's
6 briefcase?

7 A Yes, Mr. McLarty.

8 Q What did Mr. McLarty say to you about the
9 discovery of the scraps of paper at the bottom of Mr.
10 Foster's briefcase?

11 A At the time I learned of this, I'd come
12 up, I knew Mac was upstairs working and I came
13 upstairs and he said, why don't you use this. He was
14 in a room where he was working, and he said why don't
15 you use this room right near by, which I did. And I
16 was on the phone, making telephone calls, general
17 phone calls back to the White House, talking to
18 people and to others returning phone calls. He came
19 into my room to inform me that he'd had a call from
20 the White House, and that they had found this note.

21 Q Did he say anything more about the
22 discovery of the note?

1 A I don't remember the precise words he
2 used, but he indicated, based on his phone calls,
3 what he understood was that the note was found at the
4 bottom of the briefcase.

5 Q Did he indicate to you anything about the
6 contents of the note?

7 A Yes, he read me the contents of the note.
8 As I recall, he either read the contents or he gave
9 me the highlights of it. I think he read me the
10 contents of it.

11 Q Now in the period after Mr. Foster's
12 death, had there been a lot of uncertainty at the
13 White House with regard to why he might have killed
14 himself?

15 A Yes.

16 Q Do you recall discussing with the
17 President why Mr. Foster might have killed himself?

18 A As I recall, the President, as he said
19 publicly on the 21st, as he told the staff, we'll
20 never really know what all the circumstances were.
21 That suicide is such a traumatic and tragic event
22 that one can't delve into the mind of someone, fully

1 delve into the mind of someone who takes their life,
2 but there was not a lot of speculation beyond that.

3 Q Do you recall discussing with Mr. McLarty
4 why Mr. Foster might have taken his life.

5 MR. KRULWICH: You mean before the
6 discovery of the note?

7 MR. GIUFFRA: Yes.

8 THE WITNESS: We had discussions, as I
9 recall, back on the day after the death, that would
10 have been that Wednesday, we had some personal
11 discussions because Mr. McLarty and Mr. Foster, Mr.
12 Clinton and all had been to kindergarten together, so
13 he was grieving as well.

14 And he was trying to talk through to me as
15 a new friend, you know, why would somebody do this.
16 He was trying to sort of talk through as to what had
17 happened in the White House in his Washington
18 experience, would it be something in the Washington
19 experience that would have done this to him?

20 Were there activities in the White House
21 that would have done this to him?

22 It was of a more generalized nature.

1 Q Prior to the discovery of the suicide
2 note, other than the conversation you testified to
3 previously, do you recall any other discussions you
4 had with the First Lady about Mr. Foster?

5 A I can't recall any other discussion I had
6 with her, personally. I conceivably had a briefing
7 in a room somewhere, but I can't remember whether she
8 came back from Little Rock to the White House, or
9 waited in Little Rock for the President to come down
10 that Friday. I just don't remember that sequence of
11 events.

12 Q Do you recall --

13 A But I did not have a lot of conversations
14 with her.

15 Q Do you recall going to Little Rock for the
16 funeral?

17 A I did not go to Little Rock.

18 Q When did Mr. McLarty advise the President
19 of the discovery of this note?

20 A I don't know the answer to that question.
21 I know the first time, I remember the first time I
22 was aware that the President was told was around 6:00

1 o'clock, what day was it, that fell on a Monday, 6:00
2 o'clock, the next day was Tuesday. I was present at
3 that meeting.

4 Q What were the circumstances in which you
5 learned the President had been advised of the
6 discovery of the note?

7 MR. KRAVITZ: I think you've testified
8 that you were present when the President was advised
9 of the note.

10 THE WITNESS: The first time at which I
11 was aware, my testimony is the first time of which I
12 was aware --

13 MR. KRULWICH: The circumstances, the
14 question is, if I understand it, what were the
15 circumstances on which you became aware that the
16 President became aware?

17 THE WITNESS: The first time at which I
18 was aware of that --

19 MR. KRULWICH: That's less artfully than
20 you had phrased it.

21 THE WITNESS: I'm not quite sure I know
22 where we are.

1 MR. KRULWICH: Well, we are I guess at
2 6:00 p.m. on Tuesday.

3 BY MR. GIUFFRA:

4 Q The 27th.

5 A Fine, yes.

6 On Tuesday, the 27th, at around 6:00 p.m.,
7 I went to the Oval Office with Mr. McLarty and I do
8 not recall who else was there, if Mr. Nussbaum was
9 there or not.

10 Q The approximate time of this again?

11 A It was late in the afternoon,
12 approximately 6:00 o'clock Tuesday. I'm sure it will
13 have reflected on the schedule, the President's
14 schedule, his diary for the day.

15 Q What do you recall about that conversation
16 with the President?

17 A I recall us telling the President a note
18 had been found, reviewing the contents of the note
19 and recommending to the President that it be turned
20 over to the legal authorities promptly.

21 The President's first reaction was, yes,
22 we must turn it over to the legal authorities.

1 Q Did this meeting at 6:00 o'clock on
2 July 27th appear to you to be the first time the
3 President had been advised of the contents of the
4 note?

5 MR. KRULWICH: If you know.

6 BY MR. GIUFFRA:

7 Q If you know.

8 A He did not say anything, to my knowledge,
9 that implied that he had known about it previously.
10 But I couldn't tell from his reaction whether he
11 knew.

12 I went in thinking that this would be the
13 time that we were going to talk to him, but whether
14 someone told him in advance, I cannot say.

15 Q From what Mr. McLarty said during the
16 course of this meeting on the 27th, did you have the
17 impression that Mr. McLarty had spoken to the
18 President about the note previously?

19 A I did not.

20 Q Did Mr. McLarty have the contents of the
21 note typed up on a sheet of paper?

22 A There was something handwritten out or

1 written out that was in Mr. McLarty's office during
2 the day, the day after that Tuesday, but whether it
3 was typewritten or handwritten, I cannot say.

4 Q Do you recall if the President read the
5 document, indicating what was in the note?

6 A I don't recall whether the President read
7 it or it was read to him, but the contents were
8 certainly reviewed with him.

9 Q What do you recall was the President's
10 reaction upon hearing the contents of the note?

11 A My first memory is of him agreeing with
12 the recommendation promptly, that the note ought to
13 be turn over right away.

14 Q Do you recall whether there were persons
15 in the White House who did not want the note to be
16 turned over right away?

17 MR. KRULWICH: Are you talking about the
18 6:00 p.m.?

19 MR. GIUFFRA: Correct.

20 (Pause.)

21 THE WITNESS: What I cannot remember is
22 whether Mr. Nussbaum was in the meeting or not. And

1 whether he or anyone else might have said, raised
2 questions about whether it should have been turned
3 over or not.

4 I simply can't remember that because I do
5 know that part of the discussion was quite brief. I
6 do remember that it was not a long, drawn out debate.

7 The President said turn it over. He
8 didn't entertain a lot of debate on that subject.

9 Q Do you have any understanding of what Mr.
10 Nussbaum's position was with regard to the disclosure
11 of the note?

12 MR. KRAVITZ: At what time?

13 MR. GIUFFRA: As of this meeting at 6:00
14 on July 27th?

15 THE WITNESS: Well, as I said earlier,
16 there were meetings during the day on Tuesday in the
17 White House at which I was present to talk about the
18 disposition. At one of those meetings, at least one
19 of those meetings, there may have been more in which
20 Mr. Nussbaum was present, as I recall, and I do not
21 have a firm grip on this, my memory is not absolutely
22 clear on this, but I believe that his position at

1 that time was that he was not opposing the turning
2 over of the note; rather, he was raising questions
3 about is this truly a suicide note. Does the
4 doctrine of Executive privilege apply to this note.

5 And very central to the whole discussion
6 was the privacy of Mrs. Foster. Is, if the note is
7 turned over, will this mean, when it goes public as
8 it inevitably will at some point, will this subject
9 Lisa Foster to a whole series of stories about her
10 husband so that in effect she has to suffer that
11 pain, and is that the right thing to do, is that the
12 decent thing to do.

13 Those questions arose in one of the first,
14 those questions were put on the table, as I recall,
15 by Mr. Nussbaum in the meeting Tuesday morning at the
16 White House. So I knew where he was coming from.

17 BY MR. GIUFFRA:

18 Q Did it appear to you that Mr. Nussbaum was
19 looking for a legal basis to not disclose the note to
20 the public?

21 A I believe --

22 MR. KRULWICH: Don't speculate.

1 THE WITNESS: That's a speculative
2 question. I do not recall him saying we must not
3 turn it over. I do recall him raising questions. I
4 hesitate to speculate on what his underlying motives
5 were.

6 BY MR. GIUFFRA:

7 Q I believe you've testified that it's at
8 least your understanding that the President was first
9 advised of the note at 6:00 o'clock on the 27th?

10 A I think my testimony was that the first
11 time at which I was aware that he knew about it was
12 approximately 6:00 o'clock on the 27th.

13 Q Do you have any reason to believe that he
14 was advised of the note's existence prior to 6:00
15 o'clock on the 27th?

16 A I have no reason to believe either way.
17 He did not say in the meetings I attended that he
18 already knew about it to the best of my knowledge.

19 Q Did you ever ask Mr. McLarty --
20 Strike that.

21 I believe you've testified that as far as
22 you know, Mr. McLarty first advised the President of

1 the discovery of the note at 6:00 o'clock on the
2 27th.

3 A So far as I know. Mr. McLarty did not
4 tell me one way or the other that he may have told
5 him about it prior to that time.

6 Q Have you ever had any discussions with
7 anyone as to --

8 Strike that.

9 Have you ever discussed with Mr. McLarty
10 whether there were any reasons why he did not advise
11 the President earlier of the note's existence?

12 MR. KRULWICH: Since that meeting?

13 MR. GIUFFRA: Yes.

14 THE WITNESS: Since that time?

15 BY MR. GIUFFRA:

16 Q Yes.

17 A No.

18 Q Do you recall any other discussion with
19 regard to the discovery of the note on July 26th,
20 which would be Monday?

21 A I had discussions with Mr. McLarty.

22 Q Are there any other discussions you might

1 have had with anyone else?

2 A I had one other brief conversation. Mr.
3 McLarty was, as I mentioned before, had taken at
4 least one phone call from the White House before he
5 informed me of the note. He then returned to his
6 room and he was on the phone again and I went over to
7 see how he was doing, and I think he, at that time,
8 he was on the phone with Mr. Burton, his assistant,
9 and he put me on the phone briefly with Mr. Burton,
10 at which time I discussed with Mr. Burton the finding
11 of the note.

12 That was my only other conversation that
13 night.

14 Q Mr. Gergen, what do you recall about your
15 conversation with Mr. Burton with regard to the
16 discovery of the note?

17 A My memory of the conversation with Mr.
18 Burton was that he asked what I thought should be
19 done with the note, and I said, it is my judgment,
20 based on my past experience, that it be turned over
21 to the authorities promptly.

22 Mr. Burton is a lawyer by background, as I

1 recall. I was told at some point that he had
2 finished number one in his bar course in Arkansas,
3 and he is now working with a very good law firm, I
4 believe, in Texas. So Mr. Burton had a legal
5 background, and from that legal background, he raised
6 questions. He didn't say yay or nay. From his
7 position, he raised questions about the Executive
8 privilege, don't you think we ought to at least
9 research the question of Executive privilege and what
10 about the privacy questions to Vince Foster.

11 Q Did he indicate to you --

12 Strike that.

13 Did he discuss with you in any way the
14 circumstances upon which the scraps of paper were
15 found in the bottom of Mr. Foster's briefcase?

16 A I don't recall that because I'd already
17 been informed about that by Mr. McLarty.

18 Q And you don't recall any of the
19 discussions about the note on the 26th, other than
20 Burton and McLarty?

21 A I had discussions with Mr. McLarty.

22 Q Other than those two conversations?

1 A No, I did not have discussions with other
2 people on that.

3 Q Now the next morning, which would have
4 been the 27th, do you recall any discussions you
5 might have had, other than those you've testified to,
6 with regard to the discovery of the note?

7 A Well, as I recall, we had a meeting after
8 the senior staff meeting. The people who were, I
9 recall there was a meeting in Mr. McLarty's office to
10 discuss how to proceed with it, and Mr. McLarty, Mr.
11 Nussbaum, Mr. Burton, and I were in that meeting.

12 I'm not aware, I can't remember anybody
13 else being there. I'm virtually certain those four
14 individuals were in that meeting, and we had a
15 discussion back and forth about how to proceed.

16 As I said, I've already told you what my
17 position was at that meeting.

18 We had to inform the press and turn it
19 over. The new element to me, which I had not known,
20 was that about midway in the morning, approximately
21 11:00 o'clock, I can't remember what time it was, Jim
22 Hamilton joined us. Jim Hamilton was the attorney

1 for Mrs. Foster. I did not know that. Mr. Hamilton
2 is someone I've known over the years and respect as a
3 lawyer.

4 He took the position -- I do not know
5 whether, I do not recall whether he knew about the
6 existence of the note prior to coming in the room, or
7 whether he was told, but he was very strongly of the
8 view that before anything was done with the note,
9 Mrs. Foster needed to be informed of the contents and
10 needed to be informed that there was a note, and he
11 needed to sit down with her and talk about it.

12 And I agreed with that position. It
13 seemed to me that that was the decent thing to do.
14 The problem was at that point, he obviously wanted to
15 tell her quickly, that she was on her way or
16 traveling from Arkansas to Washington.

17 He said, she's arriving, as I recall,
18 early in the afternoon, 2:00 or 2:30, and I need to
19 go sit down with her. I'll try to sit down with her
20 at her home, and I'll come over and talk about this
21 as promptly as possible.

22 I can't tell you what her reaction will be

1 but my position is -- Jim Hamilton's position was, we
2 need to turn it over to the authorities. But he did
3 want to, as a matter of decency, he wanted to get her
4 assent to that.

5 He came back to the White House that
6 afternoon and said he had her assent.

7 Q Do you recall any other discussions about
8 the discovery of the note on the 27th of July?

9 A I have a memory of sort of being in and
10 out of Mr. McLarty's office and that people were in
11 there talking about it off and on.

12 I also have a memory of, on the 27th, it's
13 essentially the same four people, I also have a
14 memory that Mr. McLarty and I decided that Mr.
15 Stephanopoulos ought to know because, to the best of
16 our knowledge, he did not know. And we went over and
17 told him between one of these meetings. His office
18 was nearby.

19 I do not know whether, I don't recall
20 other kinds of discussions but they essentially
21 related to the disposition of the note.

22 Q Do you recall any discussions with regard

1 to why the note had not been found sooner than July
2 26th?

3 MR. KRULWICH: Do you mean at around that
4 time period?

5 MR. GIUFFRA: Yes.

6 THE WITNESS: Around that time period, no.
7 I was just told what I was told, as I recall, and I
8 can't recall by whom; I think by Mr. McLarty, based
9 on his conversations on the phone was that someone
10 had found it, that Mr. Neuwirth had found it when he
11 was packing things up to send things out of the
12 office.

13 I've only seen news accounts in the last
14 two or three days which raised the question whether
15 anybody else had seen the scraps of paper, but I had
16 not knowledge of that prior to those news accounts.

17 MR. KRAVITZ: Before you go into the next
18 subject, can we just take a two-minute break?

19 (Recess.)

20 (Readback.)

21 BY MR. GIUFFRA:

22 Q Mr. Gergen, have you ever discussed the

1 circumstances surrounding the discovery of the note
2 with Mr. Nussbaum?

3 A Not to my knowledge, not to my
4 recollection.

5 Q Has Mr. Nussbaum ever indicated to you why
6 he might not have seen the note when dealing with Mr.
7 Foster's briefcase?

8 A He may have said something in a meeting
9 the morning of that Tuesday morning. I don't recall
10 that conversation. It was not central to what we
11 were discussing.

12 Q Do you recall any discussion at the White
13 House with regard to --

14 Strike that.

15 Have you ever discussed why the note might
16 not have been found by Mr. Nussbaum with Mr.
17 Hamilton?

18 A No, not to my knowledge.

19 Q Do you recall any speculation at the White
20 House in July 1993, with regard to why the note was
21 not found earlier?

22 A No. The only speculation that I can

1 recall was that it was essentially at the bottom of a
2 briefcase and not seen, and it was found in the
3 packing.

4 The press reports of the past few days
5 suggest it may have been seen earlier. I don't
6 recall any speculation in the White House to that
7 effect, prior to what I first saw in the press
8 reports.

9 Q Following your meeting with the President
10 at 6:00 o'clock on July 27th, do you recall any other
11 meetings or discussions you might have had with
12 regard to this note?

13 A Yes.

14 Subsequent to the meeting with the
15 President, as I say, there have been meetings prior
16 to that with other staff members who were in the
17 White House during the day, but after that meeting
18 with the President, the Attorney General came over to
19 the White House. That meeting had been set up prior
20 to the meeting with the President. And she came over
21 to the White House around 7:00 or 7:30 that evening,
22 came to Mr. McLarty's office. As I recall, she came

1 with Phil Heymann, the Deputy Attorney General, and
2 gathered in the room where Mr. McLarty, Mr. Nussbaum,
3 Mr. Burton, me, the Attorney General, and Mr.
4 Heymann.

5 Q What do you recall about this meeting with
6 the Attorney General?

7 A I don't recall. Mr. McLarty opened the
8 meeting. I don't recall whether he told or Bernie
9 Nussbaum told her that a note had been found.

10 Her response was, let's stop right here
11 She said, why haven't you turned it over earlier, and
12 it was explained that there were discussions in the
13 White House that people wanted to see the widow, Mr.
14 Hamilton wanted to see the widow.

15 I don't think Mr. Hamilton was in this
16 meeting. It's conceivable he was, but I don't think
17 he was in this meeting, but I can't remember that for
18 a fact.

19 And that we wanted a chance to talk to the
20 President that there'd been a meeting with the
21 President about an hour before and that he instructed
22 that it be turned over promptly, and that that's

1 where we were.

2 She said, well, I don't want to discuss it
3 further here. I think the first thing to do now is
4 to call the Park Police.

5 I think there'd been some discussion in
6 our staff meetings about whether it ought to go to
7 the Justice Department or the Park Police.

8 There was some uncertainty on the part of
9 the White House about what the appropriate channel
10 was to make sure it got in there.

11 Q Do you recall any discussion?

12 A She said it ought to go to the Park
13 Police.

14 Q Do you recall any discussion with regard
15 to whether there was a fear that the Park Police
16 might leak the contents of the note?

17 A There was a discussion, there were
18 discussions of that type. I don't know whether they
19 started that day, but there certainly were
20 discussions of that type after the note was turned
21 over.

22 I think there was, if I may say so, a

1 history of investigations in Washington has been
2 frequently things that are placed in the hands of
3 investigators see the light of day prior to the final
4 report. There's always that kind of speculation. I
5 didn't find that untoward.

6 Q As of the time of this meeting with the
7 Attorney General?

8 A Can I also say that was secondary to the
9 question. I assumed in these discussions that at
10 some point that note was going to see the light of
11 day. I did not know when, but at some point. We
12 just ought to be prepared for that, it seemed to me.
13 That was one of the reasons to tell Mrs. Foster.

14 Q Do you recall any discussion in which
15 White House personnel expressed concern that if the
16 contents of the note became public, it might reflect
17 badly on either the President or the White House?

18 A I recall there was some speculation about
19 whether the contents of the note might prompt legal
20 authorities to look further into the issues raised by
21 the note. In other words, to go beyond the scope of
22 the immediate investigation over his mental state.

1 Q For example, do you recall that the note
2 mentioned the controversy over the White House Travel
3 Office?

4 A Yes, it did mention the controversy over
5 the White House Travel Office.

6 But I remember one of the issues that was
7 triggered in particular was that the note said that
8 the FBI lied.

9 Now in turning a note over to the Attorney
10 General, the question is raised, does that force her
11 hand. Is she, at that point, going to be forced to
12 reopen or to launch her own investigation of her
13 investigation, that sort of thing.

14 So those sort of issues were clearly part
15 of the speculation about what was going to happen
16 once the note went over.

17 That did not, the President, by that time,
18 as I say, around 6:00 o'clock or so, ordered the note
19 to be turned over. I can't remember whether we had
20 much discussion prior to that time about what other
21 investigations might follow, but I do know that there
22 was speculation in the days that followed.

1 Q Do you recall that there was any
2 discussion about what the consequences of turning
3 over the note would be?

4 Strike that.

5 Do you recall any discussions with the
6 President as to what the consequences of turning over
7 the note would be?

8 A As I recall, the conversation with the
9 President went mostly to the question of privacy and
10 decency. You know, the privacy of Mr. Foster.

11 I don't recall that the conversation with
12 him about what possible legal ramifications there
13 might be. I have a vague recollection and it's only
14 that that someone said once it's out in effect in the
15 public domain, you're going to have the press chasing
16 after some of these questions.

17 What does he mean by the FBI lied.

18 Q What did people think he meant by the FBI
19 lied?

20 A That would be in the pure realm of
21 speculation and I don't think it's appropriate for me
22 to even think what they may have been thinking.

1 Q You can say, well, I'm speculating.

2 MR. KRAVITZ: He testified about what
3 other people said.

4 MR. KRULWICH: He can testify what other
5 people said, but he cannot testify what other people
6 thought.

7 BY MR. GIUFFRA:

8 Q Do you recall other people saying what the
9 statement, the FBI lied to the Attorney General
10 meant?

11 A My only recollection, and I cannot
12 remember who said this, but I have a recollection of
13 someone saying that he was wrong, that there was no
14 evidence of that.

15 I do not know whether that was Mr.
16 Nussbaum or someone else, but I have a recollection
17 of someone saying that during the course of some of
18 these conversations.

19 Q Do you recall Mr. Nussbaum being concerned
20 about the possible legal consequences if the contents
21 of the note were revealed to the public?

22 A The possible legal consequences?

1 Q The possible consequences if the note were
2 revealed to the public, legal or public relations?

3 A I only can recall my memory, and I'm a
4 little hazy on this. To me, the critical question
5 was getting the note to the authorities. Once we had
6 done that, we had done, I thought, our duty. And all
7 of these other issues, frankly, were secondary.

8 And where this would lead, I'd only been
9 there a brief time. I had no idea what some of these
10 points were. I didn't know the meaning of some of
11 the phrases or some of the paragraphs in the note.
12 So I wasn't as focused on that as I was on turning it
13 over and turning it over promptly.

14 Q Do you recall any discussion between
15 persons from the Justice Department and the White
16 House with regard to how the investigation into Mr.
17 Foster's death had gone up to this point?

18 A Up until the time of the 27th?

19 Q Yes.

20 A I had, over the course of time, some time
21 between, and I can't remember exactly when this
22 started, but I had two or three telephone

1 conversations of my own with the Deputy Attorney
2 General, Phil Heymann.

3 Q Let's go slowly here. Is Phil Heymann
4 someone you had known prior to joining the White
5 House?

6 A Yes, I'd known him professionally for a
7 number of years.

8 Q Do you have any estimate as to when Mr.
9 Heymann first contacted you?

10 A I can't remember precisely. I've been
11 trying to rack my brain about whether it occurred
12 between the death and the note or after the note.

13 But I do remember having more than one
14 conversation with him by phone in which he told me,
15 look, we, the Justice Department, are not conducting
16 this investigation.

17 And I understood that and he understood
18 that, on the background on Mr. Foster.

19 I then talked to him about could he give
20 us advice or could he give me advice that I could
21 pass on to Mr. McLarty, because I was acting in this
22 case, I thought, as Mr. McLarty's link with Mr.

1 Heymann about our handling of the overall process.

2 I was not into this earlier, as I've
3 already said.

4 Q Do you recall whether you called Mr.
5 Heymann or Mr. Heymann called you?

6 A I do not recall that, but I know that
7 before it was over, he and I had more than three
8 phone calls, but I can't recall whether he initiated
9 them or I initiated them, but it was in the nature of
10 a check to make sure we were doing things right.

11 Q With regard to the entire investigation of
12 Mr. Foster's death?

13 A Yes. And also we then had a subsequent
14 conversation about what was going to happen to the
15 Park Police, I mean, how was this going to be
16 handled, was the Park Police going to complete its
17 investigation and turn it over to the Justice
18 Department, what was the process going to be.

19 And there was a question, after the note
20 was turned over, on the side of the White House about
21 the public side of the note. When is it going to
22 become public and there were questions within the

1 White House should the White House peremptorily make
2 it available, should the White House talk about what
3 was in the note, how far can we legitimately go.

4 Q In terms of damage control?

5 A Well, whatever one wants to call it. But
6 there were obviously questions about once it started
7 getting out that there was a note, the fact of the
8 note was disclosed, of course the press was all over
9 this question, well, what's in it.

10 No one knew for certain whether it would
11 hold to the Park Police, in other words, whether it
12 would leak out of the Park Police. Inevitably, in
13 that environment, people asked, well should we go
14 ahead and put it out ourselves.

15 I had a conversation with Mr. Heymann
16 about the propriety of what the White House should or
17 shouldn't do because he was someone I thought we
18 could turn to in the capacity of in effect the
19 attorney for the White House or someone who could
20 advise, legitimately advise the White House because
21 it was not something that he'd been conducting the
22 investigation himself, it would have been

1 inappropriate to call him, just as it was
2 inappropriate for me to call the Park Police.

3 I thought he was in effect someone we
4 could look to for counsel.

5 Q You were looking for someone to provide
6 independent counsel to the White House?

7 A And also someone that had a lot of
8 experience and in whose integrity I had great faith.

9 Q At this point, had events happened that
10 caused you to lose some faith in Mr. Nussbaum's
11 either independence or judgment with regard to the
12 handling of the investigation of Mr. Foster's death?

13 MR. KRULWICH: Could you sort of rephrase
14 that?

15 BY MR. GIUFFRA:

16 Q At any time, did Mr. Heymann indicate to
17 you that he believed that Mr. Nussbaum was not
18 conducting --

19 Strike that.

20 (Pause.)

21 Do you recall any discussions within the
22 White House in which anyone raised the concern that

1 Mr. Nussbaum was too close to Mr. Foster, and
2 therefore that his judgment with regard to the
3 investigation into Mr. Foster's death was somewhat
4 impaired?

5 A I don't recall a conversation precisely of
6 that type or of that nature.

7 I recall having a conversation, at least
8 one conversation, I think, with Mr. McLarty somewhere
9 along the way about, I have the somewhat different
10 philosophy about the approach that was taken but I
11 was not the counsel, and the approach that was being
12 taken. We had that conversation and I happened to
13 believe consistent with turning over the note
14 promptly.

15 Q Was this a difference in philosophy you
16 had with Mr. Nussbaum?

17 A I think there are different ways to
18 approach investigations, or the Park Police
19 investigation. I was not party to discussions about
20 how to deal with the Park Police.

21 Q What was your understanding as to how Mr.
22 Nussbaum was approaching the Park Police?

1 A I only heard about it subsequently. I
2 began hearing stories subsequently after the first
3 week, I think, some press people started asking me
4 about, they were hearing, quote, is the White House
5 dragging its feet, are you guys being fully
6 cooperative, you know. I think things were coming
7 out of the Park Police that a little bit of
8 commentary was coming out of the Park Police and it
9 was not contact.

10 And I talked to Mr. Mr. McLarty.

11 Q Do you know a man named Thomas Collier?

12 A Yes.

13 Q Who is Thomas Collier?

14 A He was the Chief of Staff to Mr. Babbitt.

15 Q He was effectively the number two person
16 at the Interior Department?

17 A I think there was a deputy, I do not know.
18 I thought there was a deputy secretary. He was the
19 Chief of Staff.

20 Q Did there come a time when Mr. Collier
21 contacted you in connection with the Park Police's
22 investigation into Vincent Foster's death?

1 A Yes.

2 Q When did Mr. Collier contact you?

3 A I don't have an exact day. I've been
4 trying to piece this together in my mind, because I
5 do remember the conversation. As best I can puzzle
6 it out, it was in the midweek of the week after the
7 death.

8 In other words, the death occurred on the
9 20th. The note was found on the 26th. The note went
10 to the Park Police on the 27th.

11 So I think I had a conversation with him
12 on the that Wednesday or Thursday, the 28th or 29th.
13 I may have the dates wrong, but in piecing it
14 together from subsequent press accounts, in part, he
15 died on Tuesday, there was not much, and on
16 Wednesday, there was contacts between Mr. Nussbaum
17 and they actually went through the materials on
18 Thursday, and I think on Friday, that was the
19 funeral, so they all went down to Little Rock.

20 I didn't go to Little Rock, but I'm pretty
21 sure it's conceivable that Mr. Collier came to me
22 that Friday. It's conceivable while they were in

1 Little Rock, or the subsequent Tuesday or Wednesday.

2 Q Which would be July 23rd?

3 A Right. It's conceivable. I sort of think
4 it was the next week. He may have a better memory of
5 that than I do. He called me. I did not know him.

6 Q What was the subject?

7 MR. KRULWICH: Can I just interrupt for a
8 second.

9 Just so the record is clear, you said at
10 one point during that last answer that the note was
11 given to the Park Police on the 27th. You don't
12 know for a fact that it was given. You know the
13 decision was made to give it. You weren't involved
14 in the giving of the note.

15 THE WITNESS: Yes, I was there.

16 MR. KRULWICH: So you were involved.

17 BY MR. GIUFFRA:

18 Q You were present when the note was turned
19 over after the meeting with the Attorney General?

20 A Yes.

21 Q Let's focus back on Mr. Collier.

22 You did not know Mr. Collier prior to this

1 telephone conversation?

2 A No. I may have talked to him once, but I
3 didn't know him.

4 Q Did Mr. Collier indicate while he was
5 contacting Dave Gergen?

6 A Yes. He was calling me because he had
7 some concerns about the investigation.

8 Q Why were you the person he was contacting?

9 A He led me to believe that he was not on
10 the best of terms for personal reasons unrelated to
11 this with Mr. Neel, the Deputy Chief of Staff.

12 And he was concerned also about some
13 issues that related not just to the investigation,
14 but the public side of what might come out.

15 And I don't know whether he'd also been
16 speaking -- he left me with the impression that he
17 may have also had a conversation with Mr. Heymann,
18 that he was the contact between Interior and Justice,
19 and sort of --.

20 Q Did he indicate that he spoken to anyone
21 else at the White House?

22 A He led me to believe that he had had prior

1 conversations with Mr. Neel and possibly Mr. Burton.
2 But I did not know whether he had the same
3 conversation he was having with me, with them.
4 Certainly he had contacts.

5 Q Did he indicate what the substance of his
6 conversation with either Mr. Neel or Mr. Burton was?

7 A I don't recall that.

8 Q Did he indicate to you that they had not
9 been able to resolve some of the concerns he was
10 having about the Park Police investigation?

11 A He didn't go into a long history. He just
12 wanted to sit down with me personally.

13 Q Did he want to go up higher in the chain
14 of command and maybe get someone?

15 A I can't answer that. That's something you
16 need to ask him.

17 Q Did he indicate if he was calling you at
18 Secretary Babbitt's request?

19 A I don't recall him invoking Secretary
20 Babbitt's name as a reason for the call.

21 Strike that.

22 I have a very, very vague recollection

1 that he invoked Mr. Babbitt's name, but I do not
2 remember that, that I saw him in that capacity. In
3 other words, I did not think he was coming as Mr.
4 Babbitt's representative. I assumed he was coming as
5 the person to whom the Park Police reported.

6 Q Do you have a relationship with Mr.
7 Babbitt?

8 A Yes.

9 Q Did Mr. Babbitt ever contact you about the
10 Park Police investigation into Mr. Foster's death?

11 A To the best of my knowledge, we've never
12 had a conversation about it.

13 Q What do you recall Mr. Collier saying to
14 you during the course of this conversation?

15 A To the best of my recollection, he said
16 that he was concerned about the pace of the
17 investigation, that there were rumblings coming up
18 from within the Park Police, that they were having a
19 hard time or they were having a harder time than they
20 would like getting all the information that they
21 wanted.

22 He then related to me that -- this is all

1 second hand, I did not know these first hand -- but
2 he said on the first day they'd come in, it was his
3 understanding that they had not been treated as well
4 as they might have hoped in terms of just the
5 personal contacts.

6 Q Did Mr. Collier invoke Mr. Nussbaum's
7 name?

8 A He talked about the Counsel's Office, and
9 I think he mentioned Mr. Nussbaum's name.

10 Q Did he say anything about Mr. Nussbaum not
11 treating the Park Police appropriately?

12 A He said, I don't recall him offering that
13 as a judgment of his own. I think what he told me,
14 as I recall, and again, I'm imprecise about this, he
15 conveyed to me that they were unhappy, and that they
16 were unhappy, I do not know whether it was at the
17 level of the investigator or at the level of their
18 boss.

19 MR. KRULWICH: Let's be clear. We're
20 talking about what happened with Mr. Nussbaum
21 specifically?

22 MR. GIUFFRA: Correct.

1 THE WITNESS: Right. He conveyed to me
2 there were these concerns about the personal
3 treatment, the way the investigation was handled on
4 day two.

5 BY MR. GIUFFRA:

6 Q Did he say anything about the way the
7 investigation was handled on day two?

8 A I believe he said something to the effect
9 that Mr. Nussbaum went through and essentially read
10 off material from the front of each page, and then if
11 the document seemed unrelated, to not show them
12 anything. If it seemed related, would give it to
13 them or show it to them, and they were not allowed or
14 were not given the opportunity to go through the
15 documents themselves.

16 In fairness to Mr. Nussbaum, I had not had
17 discussions with him about the decisions about the
18 way this was to proceed. I don't want to make a
19 judgment or offer you a judgment about whether that
20 was right or wrong.

21 I haven't had the opportunity to talk to
22 him about why things were done quite the way they

1 were.

2 What I'm reporting to you is what he was
3 reporting to me.

4 Q So it would be your testimony that Mr.
5 Collier reported to you that the Park Police weren't
6 happy that they were not given an opportunity to look
7 at all the documents in Mr. Foster's office?

8 A That they felt that they were not getting
9 the full measure of cooperation that they wanted.
10 And again I cannot say, I'm not the right person to
11 judge what degree of cooperation they were getting.

12 He then went on to say, which is what, you
13 know, because I wasn't in a good position to judge
14 that, he said, I'm coming to you in part because I
15 cannot guarantee to you that people in the Park
16 Police won't go to the press and cry White House
17 hindering investigation, White House covering up,
18 whatever.

19 But he said essentially, he said I have to
20 tell you as someone who's sitting from where I'm
21 sitting that I think that you could be on a dangerous
22 course if you continue this way.

88

1 Q Meaning the White House?

2 A The White House.

3 He said I just have to tell you that as
4 someone who's a member of the Administration and I
5 want to bring it to someone's attention over there.
6 These are what's rumbling up.

7 He said I'm not in a position, as I
8 recall, he said I'm not in a position to make an
9 independent judgment of that but I think in fairness
10 to the White House, we should tell you that there are
11 these rumblings.

12 Q Did he indicate there were any rumblings
13 about the manner in which the Park Police had been
14 allowed to conduct interviews with White House staff?

15 A I don't remember that part of it. I have
16 some vague recollection about their sense that they
17 were not, that they had not been able to reach Mrs.
18 Foster as of that time. I may be wrong about that,
19 but I have a vague recollection of it.

20 He also very precisely said, because I
21 asked him, I mean, you've already had the meeting so
22 I'm not sure there's anything more I can do about

1 that, but what is it you think can now be done that
2 will help this. Because our interest, and I told
3 them, I said Mr. McLarty's interests, because I've
4 spoken to him about this, is that this investigation
5 be conducted in an upright way.

6 We don't want to be in the position, as
7 the White House, and I know this is the President's
8 position, we do not want to be in a position that
9 anybody can fairly claim that this investigation has
10 been tainted or somehow interfered with in a serious
11 way.

12 I know there's concerns about Executive
13 privilege, I know there's concerns about privacy
14 within the White House, but I know it's the
15 President's philosophy and Mr. McLarty's philosophy
16 that this be done in an above board fashion.

17 He said, well, the one thing, I think you
18 could do two things.

19 He said one is I think you could convey to
20 Mr. McLarty the concerns that we're feeling, and
21 secondly he said, on a very precise note, they have
22 not been able to get the telephone logs so far, in

1 the days preceding Mr. Foster's death. If you could
2 speed that up in any way, that would be helpful.

3 Q Did he say anything indicating to you that
4 he believed that the Park Police was in over its head
5 in connection with this investigation?

6 A I don't recall him saying that. He may
7 have, but I don't recall that.

8 Q Do you recall anything more about your
9 conversation with Mr. Collier?

10 A I recall that I thanked him for it. I
11 appreciated him coming forward to help in that
12 conversation.

13 Q Did there ever come a time that he came to
14 visit you at the White House?

15 A He visited me during this conversation,
16 and we had the meeting on the White House grounds.

17 Q So he called on the telephone and he came
18 and visited you at the White House?

19 A He came and visited me at the White House.
20 We sat outside and held the conversation.

21 Q Do you recall why you had the conversation
22 outside?

1 A Well, it was a sunny day, and I also I
2 think I suggested it because I think, as I said, the
3 relationship between him and Mr. Neel was such that
4 it seemed to have nothing to do with this. I have no
5 idea what it was, but he did not seem to be a person
6 that Mr. Neel favored.

7 I just thought it might be simpler to have
8 the conversation somewhere else, so I suggested we go
9 outside and just talk.

10 Q Following the meeting with Mr. Collier,
11 did you take any action?

12 A Yes, I went to Mr. McLarty.

13 Q What did you say to Mr. McLarty?

14 A I reported the conversation I had with Mr.
15 Collier. I urged him to look into the matter. I
16 reported on my conversation with Mr. Collier. I
17 urged Mr. McLarty to look into it personally because
18 I was not in a position to do that.

19 And I recommended in the strongest terms
20 that we get the telephone logs to the Park Police
21 ASAP.

22 Q Did you contact anyone else?

1 A I do not recall contacting anyone else. I
2 may have discussed it with a member of my staff, but
3 I didn't talk to anybody else that I recall. I
4 subsequently had a conversation with Mr. Collier a
5 day or two later.

6 As I recall, he called me to say that the
7 telephone logs had been delivered and that the Park
8 Police found that the White House was being very
9 cooperative.

10 So without knowing exactly what happened,
11 I think that Mr. McLarty had a conversation with Mr.
12 Nussbaum.

13 Q Did Mr. McLarty indicate to you that he
14 had a conversation with Mr. Nussbaum?

15 A I only have a vague recollection of that.
16 I have some recollection he told me that he talked to
17 him, but that was all; he didn't go into it.

18 Q Did Mr. McLarty ever indicate to you at
19 any time, any displeasure with regard to Mr.
20 Nussbaum's handling of the Park Police investigation
21 into Mr. Foster's death?

22 A Mr. McLarty respected Mr. Nussbaum,

1 respected his legal judgment, and felt that since he
2 was not an attorney himself, that he ought to be
3 differential to his legal judgment. He also, Mr.
4 McLarty, is also I think he has earned reputation for
5 honesty and integrity and political sensitivity, and
6 I think he felt, as I recall him relating this to me,
7 I can't recall the exact conversation, but I think my
8 sense of what he told me was that one should respect
9 Bernie for applying his legal judgments to the
10 situation at hand.

11 That he, Mr. McLarty, had a wider
12 responsibility and that was to protect the
13 President's political and wider interests and that he
14 was looking at it in those terms. And that he might
15 have disagreements from time to time with Mr.
16 Nussbaum but he understood Mr. Nussbaum was a lawyer,
17 and he was not.

18 And frankly, that was the perspective in
19 which I was examining this.

20 Q Did he indicate to you that perhaps Mr.
21 Nussbaum was too close to the matter of Mr. Foster's
22 death?

1 MR. KRULWICH: I think you asked that
2 already.

3 THE WITNESS: He, Mr. McLarty, did he ever
4 indicate that to me?

5 MR. KRULWICH: That Mr. Nussbaum was too
6 close?

7 MR. GIUFFRA: Yes.

8 THE WITNESS: He may have. I don't recall
9 that conversation. He may have said that.

10 BY MR. GIUFFRA:

11 Q With regard to my question about
12 displeasure?

13 A Displeasure?

14 Q Mr. McLarty expressing any displeasure
15 with regard to Mr. Nussbaum?

16 A I think it was more, if I may say so, and
17 I don't want to speculate about this because I don't
18 think really I'm an appropriate person to speculate,
19 I interpreted what he was saying to me more as a
20 sense of frustration with how difficult it was to
21 balance off the various concerns that one
22 legitimately had at the White House with how to

1 handle this, how to protect the papers that were
2 legitimately not part of the investigation.

3 There was a concern that he had and others
4 had, that whatever was in Vince Foster's office that
5 didn't pertain to the investigation, ought not
6 suddenly become a matter of public record, that they
7 become part of the investigatory record and then
8 suddenly become part of the public record, especially
9 those matters which were totally unrelated to his
10 state of mind.

11 And taking the kind of rather aggressive
12 stance Mr. Nussbaum did about protecting the privacy
13 of Mr. Foster on things that were unrelated to it,
14 that one had to balance that off against, well,
15 they're saying well are you guys dragging your feet,
16 are you trying to, are you hindering this, and the
17 political ramifications that came from that.

18 As Chief of Staff, he was trying to
19 ensure, as I read everything he did, he was trying to
20 ensure that the White House conducted itself in an
21 honorable fashion, recognizing that it had more than
22 one interest and that one had to balance off those

1 interests.

2 There was some frustration about trying to
3 balance those off.

4 Q Did he indicate to you that he was
5 frustrated by the fact that Mr. Nussbaum was being
6 too aggressive in protecting the purely legal
7 interests of, for example, protecting the documents
8 from disclosure to the Park Police?

9 A I don't recall a precise conversation with
10 him about the activities of the Thursday morning. We
11 had not discussed it in advance. I think it was more
12 at the philosophical level, rather than the precise
13 activity of anyone during the day.

14 But he certainly, when I told him after
15 the conversation with Tom Collier what Mr. Collier
16 relayed to me, he certainly jumped on it. I knew he
17 said, I'm going to deal with this right away. What I
18 can't tell you is what day Mr. Collier talked to me.
19 I just don't have a clear recollection.

20 Q Did Mr. McLarty indicate to you any
21 awareness with regard to the fact that the Park
22 Police were having any difficulty in conducting their

1 investigation?

2 A I'm sorry?

3 Q When you came to Mr. McLarty and advised
4 him of the Collier conversation, did Mr. McLarty
5 indicate to you that he was aware that the Park
6 Police were having difficulty conducting their
7 investigation into Mr. Foster's death?

8 A He conveyed to me an awareness that he
9 knew that there was some unhappiness on the part of
10 the Park Police. I'm not sure he used the word
11 difficulty.

12 Q Do you recall any discussions in which
13 anyone said that there was concern that the
14 investigation was being controlled by alumni of the
15 Rose Law Firm?

16 A That I do not recall.

17 MR. KRAVITZ: Can you read that question
18 again?

19 (Readback.)

20 BY MR. GIUFFRA:

21 Q Did you ever speak to Mr. Nussbaum about
22 the conduct of the Park Police investigation or

1 register any complaints to him?

2 A I don't recall doing that. I directed
3 most of my sentiments to Mr. McLarty because he was
4 the one to whom I reported. And it probably would
5 have been seen as meddling.

6 Q When you say you directed most of your
7 sentiments to Mr. McLarty?

8 A I think all of my sentiments of I'm not
9 sure about what we ought to do were directed to him.
10 I don't recall anyone else. And I think, you know, I
11 shared with Mr. McLarty some of the concerns about
12 the various balancing requirements that went on.

13 That's one of the reasons I think there's
14 a piece that was in the Washington Post on that
15 Friday the 30th, I guess it would have been, by Anne
16 Devereaux on the handling of the note.

17 She had called me. Understand that what
18 one hears in Washington is not entirely, as you well
19 know, what you hear inside a building is also what
20 you can hear from the press, which they find from
21 their various conversations, and the Washington Post
22 was following this story with enormous interest.

1 And she conveyed to me, as did other
2 reporters, one or two other reporters, the rumbling
3 kind of thing. So I'm not sure if I was impressed by
4 that or not, but I asked Mr. Nussbaum and Mr. McLarty
5 if they'd be willing to meet with Ms. Devereaux on
6 Thursday, I think it was Thursday, the 29th, to talk
7 to her about the handling of the note. And she wrote
8 a long story in the Post.

9 They met with her down in the Ward Room of
10 the White House, and I did talk to Mr. Nussbaum at
11 that time about we need to sort of explain. Whatever
12 you want to say is up to you, but I think we need to
13 meet with her.

14 She has requested to talk to us, and I'd
15 like to make sure that happens, so I talked to her.
16 Mr. McLarty came down and talked to her. And either
17 he or I was there. He left and then Mr. Nussbaum
18 talked to her. Then I stayed for a couple of
19 minutes and left because I thought that ought to be a
20 private conversation.

21 Q What did Mr. Nussbaum say to you about the
22 conduct of the Park Police investigation?

100

1 A I think whatever he told me was in summary
2 form. We did not have long discussions about it. It
3 was more, you know, we did the right thing kind of
4 thing.

5 Q After the note was released --

6 MR. KRAVITZ: You mean turned over to law
7 enforcement and released to the press?

8 MR. GIUFFRA: Strike that.

9 BY MR. GIUFFRA:

10 Q After the note was turned over to law
11 enforcement, which I believe was the 27th, do you
12 recall and conference calls with Mr. Heymann and Mr.
13 Nussbaum that you were a party to?

14 A I certainly talked to Mr. Heymann, and
15 there are some notes in my record --

16 MR. KRULWICH: The question is whether
17 they were conference calls.

18 THE WITNESS: Right. I'm trying to
19 recall. I have a vague recollection that Mr.
20 Nussbaum was part of one of those calls.

21 BY MR. GIUFFRA:

22 Q Do you recall anything about any of these

1 conference calls or telephone calls?

2 A I think Mr. McLarty may have deputized the
3 two of us to talk, I can't swear to this, but to talk
4 to Mr. Heymann about, to talk through the issues of
5 the public release of the note, who would be
6 releasing it, would the Park Police be releasing it,
7 did he know what the Park Police would be doing,
8 because it was inappropriate for us to talk to the
9 Park Police about that question.

10 Q Did Mr. Heymann ever indicate to you any
11 displeasure with the White House with regard to the
12 conduct of the investigation into Mr. Foster's death?

13 A In one of our conversations, our telephone
14 conversations, he may have conveyed to me a sense of,
15 not a precise x, y, z, here's what you guys are
16 doing, but a sense of watch it, you know, an alert.
17 Make sure the White House was doing this, to remind
18 me in effect, these are very highly charged kinds of
19 investigations and they can be misunderstood very
20 easily.

21 Q Did he advise you of any disagreements he
22 had with Mr. Nussbaum?

1 A On this issue?

2 Q On any issue with regard to the
3 investigation of Mr. Foster's death?

4 A I have a hard time answering that question
5 because my memory is not as clear as it should be.

6 Can you restate the question.

7 MR. GIUFFRA: Just read it back.

8 (Readback.)

9 THE WITNESS: My main memory is hazy on
10 this precise point. There were some periodic
11 disagreements about issues relating to the Justice
12 Department and about the way Mr. Heymann thought they
13 ought to be handled versus the way Mr. Nussbaum
14 thought they ought to be handled.

15 I can't remember the exact nature of what
16 those disagreements were. One of them, and I do have
17 a vague recollection of having a conversation with
18 Mr. Heymann about that, because he and I have been
19 professional colleagues. We both were at the Kennedy
20 School at one time. Our paths had crossed on many
21 occasions, and so we were seen, frankly, he was
22 another oldtimer, so we occasionally would talk about

1 how things were being done. And I knew that he had
2 some, from his conversations, had some philosophical
3 differences with Mr. Nussbaum.

4 But I cannot recall, and I remember him
5 telling me that, but I can't recall whether it was
6 precisely in regard to this particular issue, or
7 whether it was other things.

8 But he and I did talk from time to time
9 during this period at the Justice Department.

10 Q Let me show you a document that we
11 received from the White House which is marked as
12 Exhibit Z522.

13 (Handing document to witness.)

14 BY MR. GIUFFRA:

15 Q Have you ever seen this document before?

16 A I have not seen this particular document.
17 I don't know what the SHC.

18 Q This is a security code that we have on
19 all documents we've presented to prevent against
20 leaking to the press.

21 (Laughter.)

22 BY MR. GIUFFRA:

1 Q We have actually been pretty good.

2 A Let me tell you, I recognize the typing.
3 I don't recognize the document. The typing is an
4 attempt, and a valiant attempt by someone with a
5 typewriter to interpret the words I had written down
6 on a piece of paper while I was having a conversation
7 with Mr. Heymann.

8 I have compared this at a previous time
9 with counsel, this typed version with the handwritten
10 version. If you have the handwritten version, I
11 think I can give you a similar rendition.

12 MR. GIUFFRA: Can we go off the record for
13 a second

14 (Discussion off the record.)

15 (Handing document to witness.)

16 THE WITNESS: Let me just say --

17 MR. KRAVITZ: We should identify it by the
18 Z number at the bottom.

19 THE WITNESS: We're talking about what's
20 identified here as Z000459. There is, on the upper
21 right hand corner of this piece of paper, the words
22 "file Foster, Vince (already have file made up, tass

1 yellow). That is not my writing and I do not know
2 where those words came from.

3 The rest of the material on this piece of
4 paper, the handwritten part of the material, comes
5 from a note on a yellow pad that I wrote down at the
6 time I was talking to Mr. Heymann. There's no date
7 on this note, and I do not recall the date.

8 At the time, we were asked by White House
9 counsel to search our files for anything relating to
10 the issues of Vince Foster, Whitewater, etcetera,
11 etcetera, I obviously went through my files looking
12 for notes.

13 This note was in my files.

14 I then sent them to the General Counsel's
15 Office, the White House Counsel's Office. To the
16 best of my knowledge, the typewritten version, which
17 is Z000522, was an attempt by someone in the
18 Counsel's office to transcribe into typewritten form
19 what was on the handwritten version.

20 As I recall, Joel Klein, who was Deputy
21 Counsel, came to me with the typewritten version, and
22 had me compare the typewritten version to the written

1 version to see if it had been properly transcribed.

2 And as I've told my current counsel, there
3 are some words here that, as I read them, are not the
4 same as on the typewritten version.

5 Q Why don't you just read through the notes?

6 A I'll read through the notes as best I can
7 reinterpret them myself in my own handwriting from
8 what's on the written version.

9 Q Actually, perhaps on a notation by
10 notation basis, read what you believe your notes say
11 and then what they mean to you looking back on them
12 now.

13 A Why don't I read the whole document, since
14 it's so brief, and then I'll come back and interpret
15 them, if that's all right?

16 Q That's fine.

17 A It's Phil Heymann, which is underlined,
18 recommendation: LV, which I take to be shorthand for
19 Leave, leave release in hands of investigators - Park
20 Police. They will want to look at all circumstances
21 around finding of note - whether they release - leave
22 it to them - send questions relating to the - and

1 that's a fragmentary sentence with no follow up.

2 The next line: Chances are they will
3 release it at some point. If they find there is
4 unfinished sentence - circumstances under which it
5 was found - unfinished - our best guess - don't take
6 that risk if I were you -.

7 Last paragraph. Since coming up from our
8 people - too much control of inquiry from beginning
9 to end was exercised by people in WH, standing for
10 White House, involved directly Vince.

11 Then, that's like I can't tell whether
12 that's a one or a with. I can't tell what that
13 little mark is at the bottom.

14 To the best of my knowledge, there is no
15 page two.

16 Okay, now I believe this was from a call,
17 conceivably was a conference call of the kind you had
18 mentioned previously. I believe this was the call
19 the telephone conversation with Mr. Heymann to talk
20 with him about whether, how the public release of the
21 note which was in the hands of the Park Police should
22 be handled, whether they should handle it, whether

1 we, or whether the White House, should take and act
2 on its own.

3 If they weren't going to release it, would
4 the Justice Department be likely to release it.

5 His recommendation, obviously based on
6 this note, is to leave that issue, leave the release
7 question to the Park Police. They'll look at all the
8 circumstances.

9 This is my interpretation of the note.
10 They'll look at all the circumstances, and whether
11 they'll release it, leave it to them, repetition.

12 I don't recall what this end question
13 relating to might be.

14 He then said, chances are they will
15 release it at some point.

16 MR. KRAVITZ: Could I just interrupt for
17 one second?

18 When you say this is your interpretation
19 of your notes, do you mean that this is your best
20 memory of what Mr. Heymann was saying to you?

21 THE WITNESS: Absolutely. Yes, that's
22 correct.

1 MR. GIUFFRA: It at any time, Neal, you
2 want to chime in with a question.

3 THE WITNESS: It said don't take that risk
4 if I were you. That was a comment on my part.

5 What I interpret that to mean is the White
6 House would be taking a risk to put this out on its
7 own, that that might be seen as an unfriendly act by
8 the Park Police.

9 And the last paragraph is self-
10 explanatory. The sense coming out from our people.
11 Presumably, that means people in his own Justice
12 Department who presumably were in contact with the
13 Park Police. There's too much of this inquiry.

14 This is the essence of what we were
15 talking about.

16 BY MR. GIUFFRA:

17 Q Do you recall any other conversations that
18 you might have had with anyone with regard to the
19 subject of whether persons too close to Vince were
20 too involved in this investigation?

21 A You've asked that. I don't recall that
22 line of speculation in my conversations with people

110

1 at the Rose Law Firm, Bernie being too close to, that
2 sort of thing.

3 Again, I think it was a question of
4 philosophy and temperament to the degree there were
5 divisions within the White House. People, we're
6 talking about how we should handle the Park Police.
7 It had more to do with that in the conversations I
8 had with Mac McLarty than to questions of the degree
9 of closeness.

10 Excuse me for a second.

11 (Discussion off the record.)

12 BY MR. GIUFFRA:

13 Q How would you describe the philosophical
14 division? Was it Mr. Nussbaum had one position and
15 other people had a different position? Or were there
16 a number of different positions?

17 MR. KRAVITZ: On any particular issue?

18 MR. GIUFFRA: He said there were
19 philosophical divisions, I believe was the word that
20 you used, differences.

21 MR. KRULWICH: I think he's been over that
22 to discuss that.

1 BY MR. GIUFFRA:

2 Q I've never heard exactly described on the
3 record what exactly was Mr. Nussbaum's view and what
4 was the other view.

5 A Again, I did not have extended
6 conversation with Mr. Nussbaum so it's unfair of me
7 to characterize his total view.

8 Q Just your understanding.

9 A What was related to me by Mr. McLarty and
10 what I heard in the meeting I did have with him, or
11 meetings we had on the day of the 27th, was a view
12 that he was the lawyer to the President and that Mr.
13 Foster, you know, there were aspects of what Mr.
14 Foster was doing which were unrelated to his death by
15 all appearances.

16 And that because the investigation
17 pertained to the circumstances surrounding his death
18 and what his state of mind might be, the papers that
19 were unrelated to that that were in the purview of
20 Mr. Foster that were in his office, and other papers
21 in his office in particular that were unrelated and
22 were protected by Executive privilege or personal

112

1 papers, in which he was acting as personal attorney
2 for the Clinton's, that he, Mr. Nussbaum, felt that
3 those were properly protected.

4 Q Did Mr. Nussbaum indicate to you that
5 there were papers in Mr. Foster's office reflecting
6 work that Mr. Foster had performed --

7 Strike that.

8 Did Mr. Nussbaum indicate to you that
9 there were papers in Mr. Foster's office concerning
10 personal legal matters of the Clinton's?

11 A I did not know what Mr. Foster was doing
12 prior to his death, did not know in fact until the
13 days that followed what his responsibilities were. I
14 had no idea how the divisions in the White House
15 Counsel's Office were made.

16 At some point in those days following, I
17 learned, I don't know where, from Mr. Nussbaum or
18 someone else, that he in fact had a range of duties,
19 one of which was to counsel the Clinton's with regard
20 to personal matters.

21 I do not know whether Mr. Nussbaum told me
22 that or not, and I can't tell you where I learned

1 that. I obviously learned it from press accounts
2 later, but my sense is I knew that before then.

3 Excuse me.

4 (Discussion off the record.)

5 THE WITNESS: The question arises about
6 what I knew about Mr. Foster's responsibilities and
7 what they were. I don't know where I learned that he
8 had some responsibility with regard to the Clinton's.
9 I don't know whether in fact I learned that from
10 press account or learned it from somebody in the
11 White House, and it was not until some time later
12 that I learned with a little more precision about
13 what might be there, so I can't say for certain
14 whether I learned it from Mr. Nussbaum or from
15 others, precisely what Mr. Foster's duties were.

16 BY MR. GIUFFRA:

17 Q Do you have a recollection, let's say in
18 the two weeks after Mr. Foster's death, that there
19 was some discussion that some of the papers in his
20 office reflected his work on personal matters for the
21 Clinton's. Is that discuss in the White House
22 discussion with press people reading it from the

1 press?

2 I'd just like you to be a little bit more
3 precise about this.

4 A I'm not sure they were press accounts as
5 of those first two weeks, about the papers that were
6 actually in Mr. Foster's --

7 MR. KRULWICH: I'm not sure that he said
8 he heard about it in those first two weeks.

9 THE WITNESS: Your question was the first
10 two weeks.

11 BY MR. GIUFFRA:

12 Q My question was, do you have a
13 recollection of any conversations with anyone at the
14 White House, let's say the first two weeks after Mr.
15 Foster's death, in which anyone mentioned that Mr.
16 Foster worked on personal matters for the Clinton's

17 If it's a vague recollection, say it's a
18 vague recollection.

19 A I can't place when I learned or when I was
20 told, but at some point, I was told that essentially
21 that papers were divided into three parts. I do not
22 remember when I was told that, whether that was in

1 the process of going through Mr. Foster's materials
2 in his office, that there was a three-way division of
3 labor, that there's a division of materials that were
4 done "items within the White House." Second were his
5 personal effects. Third were his papers relating to
6 the Clinton's.

7 It did not strike -- well, I think it is
8 true -- I don't want to speculate, but I knew at some
9 point that there were three divisions of papers.

10 I do not know when I learned of it.

11 Q Is that something you learned from
12 personnel at the White House?

13 A I can't remember. You know it's almost
14 like taking judicial notice of something. It's so
15 widely known now that I don't know. I've heard it so
16 many times from so many different sources I can't
17 place where I first learned it.

18 Q Do you have any recollection as to whether
19 Mr. Nussbaum said anything?

20 I think you previous testified you thought
21 Mr. Nussbaum may have mentioned the fact that there
22 were personal papers of the Clinton's in Mr. Foster's

1 office.

2 A I knew that Mr. Nussbaum felt that there
3 were papers that were privileged that were unrelated
4 to the Park Police. I do not remember precisely what
5 he said in that context there were personal papers
6 related to Clinton's. And I want to say for the
7 record, he never raised with me the word Whitewater
8 in that connection.

9 Q Did anyone at the White House raise any
10 concern that there were papers in Mr. Foster's office
11 that the did not want law enforcement officers to
12 see?

13 A The context in which the subsequent, my
14 memory of the conversation in the White House, and
15 again, I think it was with regard to Mr. McLarty that
16 I say this, I can't say this with precision. But I
17 think our context was that of course the law
18 enforcement officials ought to see any papers that
19 related to the circumstances surrounding the death,
20 that that was a given. That's what the investigation
21 was about, but that those papers that there was, you
22 know, to have a fishing expedition conducted in Mr.

1 Foster's office was not the purpose of the
2 investigation.

3 MR. KRAVITZ: Can I interrupt for one
4 second, and we go off the record.

5 (Discussion off the record.)

6 BY MR. GIUFFRA:

7 Q Have you ever had any conversations with
8 Susan Thomasson with regard to anything having to do
9 with papers that were in Mr. Foster's office?

10 A No.

11 Q Any conversations with the First Lady with
12 regard to anything having to do with papers in Mr.
13 Foster's office?

14 A Have I had any conversations with the
15 First Lady?

16 Q Yes.

17 MR. KRULWICH: About papers?

18 THE WITNESS: About papers in Mr. Foster's
19 office?

20 BY MR. GIUFFRA:

21 Q Or about the handling of papers in Mr.
22 Foster's office?

1 A I cannot recall a firsthand conversation
2 with the First Lady about that.

3 Q Did you ever have any conversations with
4 Maggie Williams about the handling of papers in Mr.
5 Foster's office?

6 A I cannot recall a conversation. I can't
7 swear to you that she may not have said something to
8 me, but I cannot recall a conversation.

9 Q Just one last thing. There's a document
10 we received from the FBI, I believe from the
11 Department of Justice. It's F165, and it says,
12 quote:

13 PH calls Gergen -- full and vigorous
14 investigation -- have to left FBI interview without
15 anyone being present -- call them back when you have
16 assembled everyone.

17 MR. KRAVITZ: Can you identify what that
18 document is?

19 MR. GIUFFRA: F165?

20 MR. KRAVITZ: Tell us what it is.

21 MR. KRULWICH: What precisely is that? Is
22 it notes?

1 MR. GIUFFRA: It appears to be notes.

2 MR. KRAVITZ: Explain that the Justice
3 Department told us what it was.

4 MR. GIUFFRA: It's handwritten notes of
5 Mr. Heymann's with regard to entries regarding the
6 period July 20 through 29.

7 MR. KRULWICH: May I look at it?

8 MR. GIUFFRA: Sure. I'm just trying to
9 figure out what it might mean.

10 (Handing document to counsel.)

11 MR. KRULWICH: First of all, have you ever
12 seen this document?

13 THE WITNESS: I've not seen the document
14 before.

15 BY MR. GIUFFRA:

16 Q I'm just trying to see if it refreshes
17 your recollection as to anything Mr. Heymann said to
18 you or what you have said to Mr. Heymann.

19 A I don't know precisely what the document
20 refers to. There was, as I recall, subsequent to the
21 note passing to the Justice Department or the Park
22 Police, there was a feeling on the part of those at

120

1 the Justice Department to make double sure that
2 everyone was clean and above board and everything was
3 handled, that they asked the FBI to talk to various
4 people who had some connection with the note, with
5 the circumstances surrounding the note.

6 I'm only speculating here, but this note
7 may relate to that.

8 BY MR. GIUFFRA:

9 Q Just one last question to make sure the
10 record is clear.

11 With regard to your knowledge of the fact
12 that Mr. Foster did personal work relating to the
13 Clinton's personal matters, do you believe that
14 information came from inside the White House?

15 Do you recall having any information from
16 anyone at the White House telling you that Foster did
17 anything relating to the Clinton's personal legal
18 business?

19 MR. KRULWICH: One second, if I could.

20 (Discussion off the record.)

21 THE WITNESS: The honest answer is, I
22 don't know. I may have learned it in the press. I

1 may have learned it from somebody in the White House.
2 I know that at some point, I came into that knowledge
3 and it may be more relevant to you than it was to me
4 at the time, so that it didn't strike me as being
5 something that was, that I ought to take special
6 notice of.

7 I may be wrong about this, but my
8 impression has been in the counsel's office in
9 previous Administrations had, from time to time, been
10 asked, have given advice about personal matters to
11 Presidents. I may be wrong about that.

12 MR. GIUFFRA: No further questions.

13 MR. KRAVITZ: Is it okay to go ahead
14 without a break?

15 THE WITNESS: I'm not really sure.

16 MR. KRAVITZ: Why don't we take a five-
17 minute break.,

18 (Recess.)

19 EXAMINATION

20 BY MR. KRAVITZ:

21 Q Mr. Gergen, my name is Neal Kravitz,
22 counsel for the democratic members of the Special

1 Committee.

2 I'm going to ask you some followup
3 questions in some of the areas that Mr. Giuffra
4 already covered.

5 You testified about a Washington Post
6 article that you thought came out on July 30, 1993,
7 related to White House handling of the note of Mr.
8 Foster.

9 Do you also recall that on that day,
10 July 30, 1993, you were interviewed by some FBI
11 agents regarding the handling of Mr. Foster's note by
12 the White House?

13 A I recall being interviewed by the FBI
14 agents. I don't recall the day it was.

15 Q Let me show you what's been marked as
16 FBI27 and 28. It's a 302 form summarizing your
17 interview with the FBI agents on July 30, 1993.

18 I ask you to take a look and read it
19 yourself and tell us if that refreshes your memory as
20 to the date of your interview with the FBI.

21 (Handing document to witness.)

22 (Pause.)

1 MR. KRULWICH: Your question is, does this
2 refresh his recollection that the interview was held
3 on July 30th.

4 BY MR. GIUFFRA:

5 Q That's my question.

6 A Yes, it does.

7 May I ask whether counsel will have the
8 opportunity to have a copy of that note?

9 MR. GIUFFRA: Counsel can look at my copy.

10 THE WITNESS: The question is for our
11 files.

12 BY MR. KRAVITZ:

13 Q I think the answer to that is no. This is
14 something that was provided to us by the FBI. My
15 guess is that the Committee will make it public at
16 some later time. I can tell you that if you'd like
17 to come and see it, you or your counsel would like to
18 come see it in our offices, we certainly will make it
19 available to you

20 A Fine, thank you. That's the first time
21 I've seen that note.

22 Q Under our agreement with the Justice

1 Department, we're not allowed to give anyone copies
2 of these materials because there are too many
3 confidential matters, but we'll certainly make it
4 available to you or your counsel at any time.

5 A Certainly.

6 Q So your testimony is seeing FBI 27 and 28
7 does refresh your recollection that you spoke to FBI
8 agents on July 30, 1993?

9 A That's correct.

10 Q This report, this summary, states the
11 following, quote:

12 "We've been advised that on Tuesday,
13 July 27, 1993, some time around 10:30 a.m. to 11:00
14 a.m., a meeting was held at the White House between
15 Bernard Nussbaum, Bill Burton, Mac McLarty and
16 Gergen. It was the unanimous opinion of the
17 individuals present for the meeting that the note
18 must be turned over to the Department of Justice as
19 soon as possible", end quote.

20 Does that part of this FBI summary
21 accurately reflect the part of the meeting at the
22 White House on the morning of July 27th, 1993, that

1 you've testified about?

2 A To the best of my knowledge, it does.

3 Q So it's true that in that meeting on the
4 morning of July 27, 1993, all four officials present,
5 you, Mr. Nussbaum, Mr. Burton, and Mr. McLarty stated
6 the unanimous opinion that the note must be turned
7 over to the Department of Justice as soon as
8 possible?

9 A It's been two years since all of these
10 events occurred. I had not recalled, until you
11 showed me that note, exactly when we did reach
12 agreement. I did have a recollection we reached a
13 consensus. It is my belief upon seeing that note,
14 which was a much more contemporaneous recall of the
15 events surrounding that, I believe that note to be
16 accurate, the comments there to be accurate, but I
17 cannot two years later say absolutely it was in that
18 meeting.

19 That's what I remember at the time, and as
20 I say, that was a much fresher recollection.

21 Q What you're referring to --

22 A It's not inconsistent with what I've said

1 here. It's just that that pinpoints it more
2 precisely.

3 Q What you're referring to, it's a fresher
4 recollection, is what you told the FBI and what is
5 memorialized in FBI 27 and 28?

6 A That's correct.

7 Q On July 30, 1993?

8 A That's correct.

9 Q And as you sit here today, it's your
10 recollection that there was a consensus among the
11 four people present at this meeting on July 27, 1993,
12 that Mr. Foster's note should be turned over to law
13 enforcement, and specifically the Justice Department
14 as soon as possible?

15 MR. GIUFFRA: I don't think that's his
16 testimony.

17 MR. KRAVITZ: I'm asking him.

18 THE WITNESS: My testimony is that, as I
19 recall, we reached a basic consensus among us that we
20 had to go forward with the Justice Department and I
21 think there were questions being raised as I said,
22 the night before, and there was a discussion the

1 following morning about the privacy of it, the
2 Executive privilege, that sort of thing.

3 I had not remembered, until you showed me
4 that, exactly when or in what meeting that that
5 consensus was reached. And I trust that that would
6 be right.

7 I can't say for absolute certainty today,
8 two years later, with the mists of time between us,
9 that it was reached, but I assume that to be correct
10 because that's what I testified to when it was very,
11 very fresh in my mind. I believe that to be correct.

12 Q You believe this document to be correct
13 when it says that the meeting between 10:30 and 11:00
14 in the morning on July 27, a unanimous position was
15 agreed to, that Mr. Foster's note should be turned
16 over to the Justice Department as soon as possible?

17 A Yes.

18 Can I just add one thing?

19 I do recall that the legal team wanted to
20 review the question of Executive privilege over
21 night, from the night we were in Chicago until the
22 next day.

1 Q So it would be overnight the 26th to the
2 27th?

3 A Correct. And that that morning, I believe
4 that they had resolved the Executive privilege did
5 not extend to the note.

6 Q When you say that, you're referring to the
7 time period before this meeting, as reflected in this
8 document at 10:30 in the morning?

9 A That's correct.

10 Q Just so the record is clear, as of the
11 meeting between 10:30 and 11:00 a.m., on July 27,
12 1993 at the White House, that you've been testifying
13 about, was it Mr. Nussbaum's position that Mr.
14 Foster's note should be turned over to the Department
15 of Justice as soon as possible.

16 A I can't remember absolutely. I can't
17 remember two years later exactly what was said in the
18 meeting at 10:30 on that morning. Everything and
19 what you've just shown me from the FBI testimony
20 tracks with my memory. About two years later, two
21 years later, I cannot remember exactly what Mr.
22 Nussbaum said in that meeting.

1 Q Just so it's clear --

2 MR. KRULWICH: I think you've really taken
3 this as far as we can go.

4 MR. KRAVITZ: Maybe I want the record to
5 be perfectly clear.

6 THE WITNESS: I'm trying to be as honest
7 with you as possible.

8 MR. KRAVITZ: I have no doubt that you're
9 trying to be honest.

10 MR. KRULWICH: What he's saying, he looked
11 at that document, is more contemporaneous than
12 anything he's saying now. He assumes it was
13 accurate. He can't remember for sure whether it was
14 the 10:30 meeting, or maybe it was some other time.

15 THE WITNESS: Let me put it this way. I
16 have no member of anything which would be
17 inconsistent with that note.

18 BY MR. KRAVITZ:

19 Q When you say that, you're aware that this
20 document, the FBI summary, indicates that at the
21 10:30 to 11:00 o'clock meeting, there was a unanimous
22 agreement --

1 A Yes, I agree with that.

2 Q Let me finish the question.

3 A I'm sorry.

4 Q When you say you have no reason to
5 disagree with FBI 27 and 28, your understanding of
6 this document is that it says that at the 10:30 to
7 11:00 a.m. meeting on July 27th, there was unanimous
8 agreement among you, Mr. Nussbaum, Mr. Burton, and
9 Mr. McLarty that the note should be turned over to
10 the Department of Justice as soon as possible?

11 A Yes, I understand that to be the meaning
12 of that document.

13 Q You've testified earlier about certain
14 concerns about turning the note over that Mr.
15 Nussbaum voiced at one time or another.
16 Specifically, you testified that Mr. Nussbaum
17 wondered whether the note really was a suicide note.

18 You also testified that Mr. Nussbaum
19 raised questions about whether Executive privilege
20 might be implicated by the note.

21 I think you also testified that there was
22 some broader or more general concern voiced by Mr.

1 Nussbaum just about privacy issues related to the
2 Foster family.

3 At any time, did Mr. Nussbaum use any of
4 those concerns as a basis for arguing that the note
5 should not be disclosed to law enforcement officials?

6 A I cannot remember at any time. My first
7 conversation with Bernie Nussbaum directly about the
8 note was in the meeting that was held on the morning
9 of July 27th. That was the first time we sat down
10 personally.

11 Based on the conversation with Mr. McLarty
12 the night before, when he related secondhand to me,
13 Mr. Nussbaum's concerns, and based on the personal
14 conversation I had with Mr. Nussbaum in the meeting
15 on the 27th, at no time was I aware of Mr. Nussbaum
16 taking the position that it should not be turned
17 over.

18 What I was aware of is that he was raising
19 question that ought to be examined before the
20 decision was made.

21 Q To your knowledge, did any White House
22 official ever take the position, between the

1 discovery of the note on July 26th, 1993, and the
2 time that the note was turned over to law enforcement
3 officials late in the day on July 27, 1993, that the
4 note should not be turned over to law enforcement
5 officials?

6 A To my knowledge, no White House official
7 took the position that the note should not be turned
8 over.

9 There were White House officials who had
10 questions that they thought out to be addressed
11 before the decision was made, but I'm not aware of,
12 cannot remember any White House official taking the
13 final position that it should not be turned over.

14 Q And as far as you know, once those
15 questions that needed to be raised were resolved,
16 there was unanimous agreement among White House
17 officials that the note should be turned over to law
18 enforcement officials, is that right?

19 A That's correct.

20 Sorry?

21 MR. KRULWICH: I just want to be sure
22 we're on the same time period. You're talking now

1 about the 26th and 27th.

2 MR. KRAVITZ: Sure, the 26th and 27th of
3 July. Well, let me rephrase the question.

4 THE WITNESS: I said I was unaware of
5 anyone taking the position that it should not be
6 turned over. That is not to say that the same people
7 took the position that it should be turned over. The
8 position was, let's resolve the questions, and then
9 we'll reach that issue.

10 BY MR. KRAVITZ:

11 Q On July 26 and 27, as far as you aware,
12 everyone at the White House who was considering this
13 issue, after resolving the questions that were
14 raised, came to the conclusion that the note should
15 be turned over to law enforcement officials.

16 Is that right?

17 A With regard to July 27th, once the
18 questions had been thrashed out, it was my
19 understanding that the White House officials agreed
20 that the note should be turned over.

21 And to add to that, I am not aware of
22 anyone arguing at the meeting with the President at

1 6:00 o'clock that evening, at approximately 6:00
2 o'clock, I'm not aware of anybody taking the position
3 with the President that it should not be turned over.

4 Rather, I believe the presentation to the
5 President was, here's the context. The note has been
6 found, here are the contents. We think it ought to
7 be turned over.

8 And immediately, he ordered it to be
9 turned over.

10 Q Now you agreed with the thought that the
11 note should be shown to Mrs. Foster before it was
12 turned over to law enforcement officials.

13 Is that right?

14 A I did agree with that position.

15 Q Did you also agree that the President
16 should be advised of the existence and of the
17 contents of the note before the note was turned over
18 to law enforcement officials?

19 A I recommended to Mr. McLarty the night of
20 the 26th, the night in Chicago, that the note be made
21 known to the President and then be turned over to the
22 authorities.

1 Q Were both of those concerns taken care of
2 as soon as it was practical under the circumstances?

3 MR. KRULWICH: That's an opinion question.

4 THE WITNESS: That's a judgment call.

5 BY MR. KRAVITZ:

6 Q Let me ask you this.

7 In light of the circumstances --

8 Well, let me rephrase the question.

9 In light of the circumstances as you knew
10 them to be on July 26th and 27th, 1993, what is your
11 opinion as to the reasonableness of the period of
12 time that it took between the discovery of the note,
13 had elapsed between the discovery of the note and the
14 time that the note was disclosed to law enforcement
15 officials?

16 MR. KRULWICH: I don't know. His opinion
17 isn't really relevant to the inquiry what the facts
18 are would be relevant. He's not an expert on turning
19 over things directly.

20 BY MR. KRAVITZ:

21 Q You can answer the question.

22 A I thought as a precondition to turning

1 over the note, that we needed to tell the President.
2 And upon reflection, I thought we needed to tell Mrs.
3 Foster.

4 I thought once we had told Mrs. Foster and
5 told the President, that we turned it over as
6 expeditiously in as reasonable a period as possible.

7 I thought we turned it over quickly
8 afterward. We had to get over those two hurdles in
9 my judgment. I mean, I thought we had those
10 preconditions, let's put it that way.

11 Q At any time on July 26, 1993, did you tell
12 anyone that you thought the White House was taking
13 too long a period of time to inform the President
14 about the note?

15 A What day is that?

16 Q That's the day that you were first
17 informed of the note's existence.

18 A Mr. McLarty asked me my judgment about
19 what we should do when he came into the room in
20 Chicago. My recommendation to him at the time was
21 that the President should be informed of the note and
22 we should then turn it over to the authorities

1 promptly.

2 Q That wasn't my question.

3 My question was, at any time on July 26th,
4 1993, did you express to anyone a concern that the
5 White House was taking too long a period of time to
6 inform the President of the note's existence?

7 A In view of the conversations that Mr.
8 McLarty principally was having, and I had a brief
9 conversation with Mr. Burton, in view of the
10 questions that arose at the White House, the
11 questions that they thought out to be addressed with
12 regard to Executive privilege and privacy and that
13 sort of thing, and Mr. McLarty, at the end of those
14 conversations, told me he thought these were things
15 that could be addressed back in Washington when we
16 gathered in the morning, various concerns raised by
17 people at the White House ought to be addressed, and
18 as I recall, he said to me something that he'd like
19 to see the note himself, and certainly have a chance
20 to think about it.

21 I did not, on the night of the 26th, say
22 Mac, this is too slow. I did not say that.

1 Q On July 27th, 1993, at any time, did you
2 express the opinion to anyone that the White House
3 was taking too long a period of time to inform the
4 President of the discovery and contents of Mr.
5 Foster's note?

6 A I did not say precisely that it was taking
7 too long.

8 I did tell Mr. McLarty I thought it was
9 important that the note be turned over by the end of
10 the day.

11 Q On the 27th?

12 A On the 27th.

13 (Discussion off the record.)

14 THE WITNESS: I don't recall expressing
15 the sentiment about moving too slowly to Mr. McLarty.

16 What, we were in a situation, as we looked
17 at the President's schedule, that he had a very busy
18 day that day, as I recall.

19 BY MR. KRAVITZ:

20 Q Which day, the 26th or 27th?

21 A The 27th back in Washington. I do not
22 remember what was on his schedule, but I do remember

1 it's being a busy day.

2 And I don't know, I can't say for sure
3 whether I was not frustrated about let's move on,
4 let's get this moving, and whether I may have
5 expressed that to someone on the staff. I cannot
6 recall precisely.

7 But I did think it was important, as I
8 told Mr. McLarty to get it done that day.

9 I thought it was very important, and we
10 did get that done that day.

11 MR. KRULWICH: Excuse me one second.

12 (Discussion off the record.)

13 THE WITNESS: I can't recall, counsel's
14 raising the question of trying to push my memory on
15 this, I can't recall telling Mr. McLarty that it was
16 going too slowly.

17 He knew --

18 MR. KRULWICH: You're talking about the
19 26th?

20 THE WITNESS: The 26th in particular, but
21 he knew that I felt we should move quickly. That
22 that was my judgment. I wanted to go rapidly, as

140

1 rapid as events would carry us forward.

2 Knowing, as I heard the concerns of those
3 in the White House, I recognized there were
4 legitimate questions.

5 When Mr. McLarty said, David, let's take
6 this up in the morning when we get back, I said,
7 fine.

8 My instinct was, and you should know I
9 left Chicago before the Presidential party did that
10 night, so that I was not, we did not have prolonged
11 discussions after that.

12 There was a democratic fundraiser that
13 night in Chicago, and I'd said, when I came into the
14 White House, I would not take part in democratic
15 politics. I would help the President out with
16 governments and on the political side, there was a
17 fundraiser, and I went and came back by a different
18 plane, shortly after this conversation with Mr.
19 McLarty.

20 As I left, he said, we'll deal with this
21 in the morning, and I left because he and I agreed
22 that evening that the proper course here was going to

1 be to turn the note over, tell the President to turn
2 the note over.

3 I don't recall having a conversation with
4 him about Lisa Foster that night. So I left there
5 knowing where I thought Mr. McLarty was, and
6 believing that once we had an opportunity to have a
7 conversation with the staff, and an opportunity to
8 talk with the President, I believed we were done.

9 BY MR. KRAVITZ:

10 Q Mr. Giuffra asked you some questions about
11 whether you remembered discussions at the White House
12 about why Mr. Foster's note was not discovered sooner
13 than it was.

14 And I believe you testified that you
15 remember hearing some speculation at the White House
16 that the note had been at the bottom of Mr. Foster's
17 briefcase and had not been seen there.

18 Can you give us a little bit more details
19 about what it was that you heard, who you heard it
20 from, when you heard these thoughts, speculations?

21 A I don't have as precise a memory as I
22 would like on that question.

1 Mr. Burton may have said something to me
2 in a phone conversation, that it was just in the
3 bottom of the briefcase, because I think all of us
4 were surprised.

5 I mean, after all, there'd been no note,
6 and there'd been people looking around and they
7 hadn't seen it, so that I think it generally
8 surprised everybody, at least it was to Mr. McLarty,
9 it was to me, and I assume everybody.

10 And Mr. Burton may have said, or Mr.
11 McLarty told me that it was at the bottom. That's
12 when I think I heard it, because I was going to say
13 what, the natural reaction was, what are you talking
14 about? Why today.

15 And I said, well, it was at the bottom of
16 the briefcase. That was about as far as my memory
17 goes.

18 I did not know and did not go back over.

19 Again, I stress it was not in my purview
20 to review the individual actions of the Counsel's
21 Office. I was not in the line of authority over the
22 Counsel's Office.

1 I was just given the dynamics of the White
2 House, that it was inappropriate for me to be
3 grilling people on questions like that.

4 Q You testified that you recalled some
5 speculation by officials at the White House that the
6 contents of Mr. Foster's note, once disclosed, might
7 prompt law enforcement authorities to look more
8 closely at one or more of the controversies that were
9 actually mentioned in Mr. Foster's note?

10 A Correct, especially the point about the
11 FBI.

12 Q Did you hear this speculation that you
13 referred to during the time period before the note
14 was turned over to law enforcement officials on
15 July 27th?

16 A I can't say for an absolute certainty
17 about that. I do remember the speculation that that
18 was not, I can only say that to the best of my
19 memory, that was not at the heart of the discussion.
20 It had much more to do with Executive privilege and
21 privacy kinds of issues.

22 Q So the speculation about attracting closer

1 law enforcement scrutiny was not one of the principal
2 concerns or issues raised by Mr. Nussbaum on July
3 26th and 27th, to your memory, is that right?

4 A Well, it was again, I had no conversations
5 with Mr. Nussbaum on the 26th, and to the best of my
6 memory, on the 27th, he did not raise those kind of
7 questions.

8 But, again, my memory is somewhat foggy.
9 I just don't remember that.

10 Q To the extent that anyone may have raised
11 this concern about inviting closer scrutiny from law
12 enforcement officials, to the extent anyone might
13 have raised that concern before the note was turned
14 over on July 27th, 1993, that concern did not cause
15 any official to argue against turning over the note,
16 did it?

17 MR. GIUFFRA: How would he know that?

18 THE WITNESS: Not in my presence.

19 BY MR. KRAVITZ:

20 Q To your knowledge?

21 A To my knowledge.

22 Q During the meeting with Attorney General

1 Reno at the White House on July 27, 1993, did Ms.
2 Reno say anything about the length of time that had
3 elapsed between the discovery of the note on the 26th
4 of July and the time of the meeting with Ms. Reno on
5 the 27th of July?

6 A To the best of my recollection, she said
7 something to the effect, when she was told of the
8 note, she said, let's stop right here. She said why
9 didn't you turn it over before, right away, or you
10 must turn it over right away, as if, let's get moving
11 fellows.

12 She did not want to go forward with the
13 conversation until a call had been placed to the Park
14 Police and the Park Police came in.

15 Q That's all you remember Ms. Reno saying on
16 any subject relating to timing?

17 A To the best of my knowledge, she was not
18 passing out bouquets.

19 (Laughter.)

20 THE WITNESS: She, as I recall the
21 conversation, she immediately said something to the
22 effect, why didn't you turn it over earlier, or you

1 must turn it over right away.

2 And things stopped, and then there was a
3 phone call made, as I recall.

4 As I recall it, someone, either Mr.
5 McLarty or Mr. Nussbaum, I cannot remember who, and I
6 may have chipped into this conversation, then walked
7 through with her the reasoning that went behind the
8 need to talk to the President and the need to talk to
9 Mrs. Foster.

10 And that when she understood that, she
11 seemed to be much more comfortable.

12 That's my memory of that conversation.

13 Her first reaction, as I said, once she
14 heard the background to it, then she seemed to be
15 more comfortable, much more comfortable.

16 Q You testified previously about some
17 telephone conversations you had with Phil Heymann
18 regarding the White House handling of the
19 investigation of Mr. Foster's death.

20 I think you described it as a check to
21 make sure that the White House was doing things
22 right.

1 Do you remember your testimony?

2 A Yes.

3 Q What time period did these telephone
4 conversations with Mr. Heymann take place?

5 A I'm sorry. I've had a hard time with that
6 question myself, trying to recollect when I had those
7 conversations. I don't know whether they began in
8 the week of the death or the next week.

9 Q Can you place these conversations before
10 or after the discovery of the note?

11 A I cannot with certainty.

12 My sense is that it was more in the second
13 week, but I cannot say that with absolute certainty.
14 And my logs don't reflect that.

15 MR. KRULWICH: Don't guess.

16 THE WITNESS: I just don't know.

17 I think the most honest answer is, he
18 might be a better witness on that subject.

19 BY MR. KRAVITZ:

20 Q You testified that when you met with Mr.
21 Collier in late July 1993, Mr. Collier indicated to
22 you that he had heard that Park Police investigators

1 were having trouble getting access to Mr. Foster's
2 telephone logs.

3 Is that correct?

4 A That's correct.

5 Q To the best of your memory, what exactly
6 did Mr. Collier tell you about what he had heard
7 about the Park Police's efforts to get access to the
8 telephone logs?

9 A Again, the fog of memory is such that I
10 can't recall it with precision, but to my memory, he
11 said something to the effect that they can't
12 understand why they have not received the telephone
13 logs. Several days have now passed since their
14 inquiry first was made.

15 Q Did Mr. Collier indicate to you that it
16 was his understanding that the Park Police had made
17 one request to see the telephone logs?

18 A They had made a request. I don't know if
19 it was a multiple request or not.

20 Q Did Mr. Collier tell you that it was his
21 understanding that this request that had been made by
22 the Park Police to see Mr. Foster's telephone logs

1 had been made during the office search on July 22nd?

2 A I don't recall him saying precisely when
3 the request was made.

4 Q Did Mr. Collier say anything to you?

5 A I do know he said there'd been a passage
6 of time.

7 Q Did Mr. Collier tell you whether there had
8 been any communication between White House officials
9 and the Park Police investigators since the July 22nd
10 office review regarding Park Police access to the
11 telephone logs?

12 A He may have said that there was a
13 subsequent request but I don't recall that precisely.

14 The impression I came away with from the
15 conversation was that this had been a prior request
16 of some standing, but time had passed. It was more
17 the length of time that had passed, rather than a
18 repetitive series of requests.

19 And that they were anxious to get them.

20 And as I say, going back to the rumblings and that
21 sort of thing.

22 MR. KRAVITZ: I'm going to apologize in

1 advance for jumping around. I'm trying to save time
2 here. I'm not sure I'd describe this as reality.

3 MR. GIUFFRA: It's a kind of reality.

4 BY MR. KRAVITZ:

5 Q Mr. Giuffra asked you a lot of questions
6 about when you learned or when you first learned that
7 Mr. Foster may have been involved in working on
8 personal financial matters for the Clinton's.

9 Do you remember those questions?

10 A Correct.

11 Q I just want to ask you about a few dates
12 to make the record as clear as possible.

13 As of July 20, 1993, the day Mr. Foster
14 died, did you have any information that Mr. Foster
15 had worked on any personal financial matters for the
16 Clinton's?

17 A To the best of my recollection, I had no
18 idea what Mr. Foster was doing, other than in one
19 event I worked with him on, which was the selection
20 of a Supreme Court nominee.

21 I cannot say, there had been editorials in
22 the Wall Street Journal about Mr. Foster, and I don't

1 recall what they said.

2 Q To the best of your memory, as of July
3 22nd 1993, the day that Mr. Nussbaum conducted the
4 review of the contents of Mr. Foster's office in the
5 presence of law enforcement officials, did you have
6 any information that Mr. Foster had worked on an
7 personal financial matters for the Clinton's?

8 A To the best of my recollection, I did not.

9 Let me just put this, at the time of the
10 death, at the time of the evening of the death and
11 the two or three days that followed, I had no basis
12 for worrying about this being anything other than a
13 routine investigation into the cause of death, until
14 a White House official, who was a high ranking White
15 House official, to the best of my knowledge at that
16 time, we were working on a routine question that
17 comes up in many suicides about why the suicide.

18 That's what I thought we were dealing with
19 and I was operating, and my response and my advice to
20 the President and my advice to Mr. McLarty and
21 particular my advice to Mr. McLarty because I wasn't
22 really giving advice to the President about this, was

152

1 that it was in that context that we were talking
2 about the office being sealed, the trash and the burn
3 bags and that sort of thing.

4 Q When you and Mr. McLarty first informed
5 President Clinton of the contents of Mr. Foster's
6 note on the evening of July 27th, 1993, were you able
7 to observe or get a sense of the President's
8 emotional reaction to the note?

9 A Again, I do not know for a fact that that
10 was the first time that he learned it. I only know
11 what we said in the meeting.

12 Q Could you tell what his emotional reaction
13 was?

14 A The only emotional response I remember
15 from him was his concern about the family and what
16 Mrs. Foster was going to have to go through with the
17 note, and presumably stories that might well be
18 generated by that.

19 But, again, it was on the context of his
20 probably saying, let us turn it over immediately.

21 (Pause.)

22 Q I want to direct your attention --

1 Actually, do you want to add something to
2 that last answer?

3 A No, thank you.

4 Q Are you sure?

5 A Yes.

6 Q I want to direct your attention to the
7 night of July 20, 1993, the night of the day that Mr.
8 Foster died, and specifically to your visit to the
9 Foster family home.

10 Did you have any conversation at the
11 Foster family home with David Watkins?

12 A I do not recall a conversation with Mr.
13 Watkins. I have a vague recollection of seeing Mr.
14 Watkins far across the room in a crowded room.

15 I may have shaken hands with him, but I
16 don't recall a conversation with him.

17 Q You're certain?

18 A The answer is no.

19 Q Do you have any recollection of speaking
20 to the officers of the United States Park Police
21 during your visit to the Foster family home that
22 night?

1 A I don't recall seeing any officers of the
2 Park Police.

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1 Q You testified that direct time period that
2 you and Mr. Jordan and Mr. McLarty were with the
3 President in the residence later that night or early
4 the next morning, the President left the room that
5 you were all in two or three times, as you understood
6 it, to have telephone conversations with the First
7 Lady. Is that right?

8 A Correct.

9 Q I think you've testified that, based on
10 comments that the President made when he returned to
11 where you were, you learned something of the content
12 of some of those conversations. Is that right?

13 A Yes.

14 Q Did the President say anything to indicate
15 that he and his wife had made any mention in their
16 telephone conversations that night about any files or
17 other documents that might have been in Mr. Foster's
18 office?

19 A I recall no conversations by anyone there
20 -- the President or Mr. Jordan or Mr. McLarty or me --
21 about any files in his office.

22 Q Did the President say anything in your

1 presence that night that mentioned the word
2 "Whitewater" or the term "Whitewater Development
3 Corporation?"

4 A No.

5 Q Did the President say anything in your
6 presence that night that related in any way to his
7 and the First Lady's personal financial matters?

8 A No.

9 Q Was there any mention by the President or
10 anyone else in your presence in the White House
11 residence that night of Bernie Nussbaum, Maggie
12 Williams or Patsy Thomasson?

13 A No.

14 MR. KRULWICH: Wait. Was there any
15 mention of them period? Or just the names?

16 BY MR. KRAVITZ:

17 Q Let me break it down.

18 During that time period when you and
19 Vernon Jordan and Mr. McLarty were with the President
20 in the residence that night, after you returned from
21 Mr. Foster's home, did anyone say anything about
22 Bernie Nussbaum, to your recollection?

1 MR. KRULWICH: Period, in any context?

2 MR. KRAVITZ: Yes.

3 THE WITNESS: I'm glad you rephrased the
4 question, because as I recall there was some
5 discussion of Bernie. But I don't recall any
6 conversation about Maggie Williams or Ms. Thomasson.

7 BY MR. KRAVITZ:

8 Q What was the conversation you remember
9 about Mr. Nussbaum at that time?

10 A The conversations related, as I recall, to
11 his closeness to Mr. Foster; personal, emotional
12 closeness, and what a blow this would be to Mr.
13 Nussbaum. I do not recall it relating to anything
14 beyond that about any office matters.

15 Now, with counsel's permission, I would
16 like to reiterate; Mr. Gearan had said there'd been
17 no note found in our previous conversation, and also
18 related to the trash and the burn bag. We've been
19 through all that. So I don't recall whether we ever
20 discussed, did Bernie go in and find a note or look
21 for a note or whatever. I don't recall that
22 precisely. But clearly, I knew that someone had been

1 in the office, or he wouldn't have got the trash out.

2 Q During the time period that you were in
3 the White House residence that night with Vernon
4 Jordan, Mac McLarty and President Clinton, did anyone
5 say anything about the travel office matter?

6 (Pause.)

7 A I can't say for certain about that. There
8 may have been. I have a recollection either that
9 night or the next day having a conversation with Mac
10 about whether the travel office matter was weighing
11 on Vince Foster emotionally.

12 Q Was that the only context as far as you
13 recall in which the travel office matter came up on
14 the night of Mr. Foster's death and the next day, as
15 far as you're aware?

16 A To the best of my knowledge, the context
17 of the conversations about the travel office related
18 to whether it had a very strong emotional impact on
19 him, whether it depressed him.

20 Q So, as far as you're aware, on July 20 and
21 21, 1993, the only context in which the travel office
22 came up had nothing to do with whether there were

1 documents related to the travel office in Mr.
2 Foster's office?

3 A No. I would have remembered that. I
4 remember no such conversation.

5 Can I just add for the record? Because I
6 think the line of your questions suggests that the
7 only people ever in the residence were the four of
8 us. And there was a time when Ambassador Kantor and
9 his wife did visit for a few minutes for a short
10 while.

11 Q Would your answers to the previous series
12 of questions --

13 A No. All of the answers --

14 Q Let me just ask the question on the
15 record, and then you can answer it.

16 Would your answers to all these previous
17 questions about conversations in the White House
18 residence late at night on July 20, 1993 stand, along
19 with the addition of Ambassador Kantor and his wife?

20 A Yes.

21 Q I want to ask you some questions about
22 discussions that you've testified about having with

1 Mac McLarty and Mark Gearan relating to whether or
2 not Mr. Foster's office was sealed. Do you
3 understand?

4 A Uh-huh.

5 Q Your testimony is -- well, actually,
6 strike that.

7 Is it your best recollection that the word
8 used by you and Mr. McLarty during your initial
9 conversation on this subject was "sealed?"

10 A I have a rather clear recollection that
11 the word I used with Mr. Gearan was "sealed."

12 Q What I asked you was about your first
13 conversation with Mr. McLarty.

14 A The word I used with Mr. McLarty was
15 "sealed."

16 Q What did you mean by the word "sealed" as
17 you used it on the night of July 20, 1993?

18 A What I understood by the word "sealed" was
19 the door would be closed, and it would not be
20 possible for someone, once it was sealed, for someone
21 to go through without permission of somebody. I
22 don't know who.

1 Remember, again, I was not aware whether
2 the Park Police had ever asked for anything to be
3 sealed. This was simply in the context of Mr.
4 McLarty and I talking about it being sealed, and it
5 was simply in the matter of what I assumed at the
6 time was a rather straightforward question of some
7 investigating authority -- and I don't know whom --
8 wanted to look for a note at some point, to see if
9 there was a note.

10 It's in that context. But I didn't know
11 whether there was a lock. I mean, I had not been to
12 the office. So I didn't know there was a locked
13 door. I just assumed once the word "sealed" was
14 used, after that -- and this was rather late at night
15 that we were talking -- what I understood the word
16 "sealed" to be was, after that, people would not --
17 it would be a closed office unless you received
18 permission to go in it.

19 (Discussion off the record.)

20 BY MR. KRAVITZ:

21 Q Did you want to add anything?

22 A No. Especially I don't want to add

1 anything. He said, "When am I going to get the hell
2 out of here?"

3 (Laughter.)

4 BY MR. KRAVITZ:

5 Q So it was not your understanding when you
6 used the word "sealed" that that meant that no one
7 could go in the office, correct?

8 A That's correct.

9 Q Did you have some sense in your mind as to
10 who it was who could give someone permission to go
11 into the office once it was sealed?

12 A I did not have a precise sense in my mind.

13 Q Did you have some general sense?

14 A Well, it struck me that Mr. Neel, as
15 deputy chief of staff, had already taken authority
16 over the bags. I didn't know whether he would be the
17 person or not. I was rather new to the White House,
18 so I didn't know who exactly would do that. But it
19 sounded to me like Mr. Neel might be the person.

20 Q In other words, it was your sense that an
21 appropriate White House official would have the
22 authority or should have the authority to give

1 someone permission to go into the office after it had
2 been sealed?

3 A Absolutely.

4 Q It's your testimony that you had never
5 been in Mr. Foster's office as of that time on July
6 20, 1993. Is that right?

7 A To the best of my knowledge, I had never
8 been in Mr. Foster's office during that period of
9 time. While I was employed at the White Houses, I'd
10 been in those offices in previous White House
11 experiences. But I'd not been in the White House
12 counsel's office at that point, to the best of my
13 knowledge.

14 Q Were you aware, as of your conversations
15 with Mr. McLarty and Mr. Gearan on the night of July
16 20, 1993, that the White House counsel's office suite
17 had an alarm?

18 A No, I was not aware. You're telling me --
19 that is the first time I've heard.

20 Q To the best of your memory, what were Mr.
21 Gearan's exact words when he called you back and told
22 you what he had learned about the status of Mr.

1 Foster's office?

2 A I cannot remember for certain whether Mr.
3 Gearan put me on hold or whether he called me back.

4 Q Fair enough.

5 A But when the conversation resumed, to the
6 best of my knowledge, he told me that he had checked
7 and the office was sealed. And then he went on to
8 talk about the trash.

9 Q Throughout your conversation or
10 conversations with Mr. Gearan, did you distinguish
11 between Mr. Foster's personal office and the White
12 House counsel's office suite as a whole in terms of
13 your questions about whether it was sealed?

14 Do you understand the question? In other
15 words, did you ask specifically, "Is Mr. Foster's
16 office sealed?"

17 A To the best of my recollection, yes.
18 Thank you.

19 MR. KRULWICH: Are you talking physically,
20 the physical difference between the White House
21 counsel's office and --

22 MR. KRAVITZ: I'm asking him whether he

1 distinguished the two.

2 THE WITNESS: To the best of my
3 recollection, that conversation was about Mr.
4 Foster's office. I recall no conversation about the
5 suite. That's what I thought we were talking about.

6 BY MR. KRAVITZ:

7 Q Do you have any recollection whether, when
8 Mr. Gearan got back to you with the answer, whether
9 he referred specifically to Mr. Foster's office or
10 more generally to the White House counsel's office
11 suite as being sealed?

12 A To the best of my recollection, he talked
13 about Mr. Foster's office.

14 Q When you attended the senior staff meeting
15 at the White House on the morning of July 21, 1993,
16 were you able to observe the emotional condition of
17 the senior staff members present?

18 A I must tell you I cannot remember. I said
19 earlier I cannot remember whether I actually attended
20 that meeting. I recall that I got home quite late at
21 night -- early in the morning, as you say.

22 Q Let me rephrase the question.

1 A So it may have been a late-starting day
2 for me. I don't remember that meeting at all. I
3 have no memory of that meeting.

4 Q Let me rephrase the question.

5 Were you present at the White House on the
6 morning of July 21, 1993?

7 A I was present at the White House that
8 morning.

9 Q Did you come into contact with other
10 senior White House officials that morning?

11 A Yes, I did.

12 Q Were you able to observe their emotional
13 condition?

14 A Yes, I did.

15 Q What did you observe?

16 A They were very distraught.

17 Q Who did you observe as being distraught on
18 the morning of July 21, 1993?

19 A Almost everyone I ran into. I can't
20 remember exactly who I saw.

21 Q Mr. McLarty?

22 A Of course, I'd spent a great deal of time

1 with him the night before, but it was shell shock. I
2 mean, remember, no one in a high-level position in
3 government had committed suicide in half a century.

4 Q You testified that one of the things you
5 were focusing on on the morning of July 21 was
6 getting the President to hold a staff meeting that
7 day. Is that right?

8 A Yes. I'd spoken to him the night before.

9 Q What was your purpose in trying to arrange
10 that staff meeting?

11 A I thought it was -- my belief was that it
12 was important for him to pull the staff together,
13 because morale would be through the floor,
14 spiritually through the floor. And I thought he
15 could rally the staff, and I thought in rallying the
16 staff he would rally himself.

17 (Pause.)

18 Q Do you know what dates you worked in the
19 Clinton White House?

20 A I began working there in June of 1993.

21 Q Do you remember the date you started?

22 A It was, I believe, the Thursday after

1 Memorial Day, which would put it around June 2 or 3.
2 And I moved from the White House to the State
3 Department in the summer of 1994, and I was there for
4 a period of six months before leaving the
5 Administration.

6 At the time while I was in the State
7 Department, I had a joint appointment, so that I was
8 just a special adviser to the President and to the
9 Secretary of State. So I'm not sure I went off the
10 White House payroll, just to make sure the record is
11 straight.

12 Q Were your position and title the same
13 throughout the approximately one-year period that you
14 were at the White House physically?

15 A Yes.

16 Q What is your understanding as to the
17 reason or reasons why you moved from the White House
18 to the State Department in the summer of 1994?

19 MR. KRULWICH: That's way beyond the scope
20 of this.

21 BY MR. KRAVITZ:

22 Q You can answer the question.

1 MR. KRULWICH: It has nothing at all to do
2 with anything that's in the resolution, as far as I
3 can tell.

4 MR. KRAVITZ: I really disagree with that.
5 The circumstances for moving around jobs is something
6 we've gone into with every witness. And people's
7 motivations for testifying in one way or the other
8 are completely relevant.

9 And I think, in the interest of moving
10 this along, I think we ought to just get an answer to
11 the question.

12 MR. KRULWICH: In the interest of moving
13 this along?

14 THE WITNESS: I'll be brief.

15 I had informed people at the White House
16 that I wished to leave the White House before the
17 elections of 1994, consistent with my desire not to
18 be involved in politics on behalf of the Democratic
19 Party. Because I just thought it was inappropriate,
20 given my background; and that my expectation was that
21 I would be leaving by the end of the Congressional
22 session and before the elections.

1 And it was in that context that I was
2 approached by several people -- Mr. McLarty, the Vice
3 President and the President -- asking me if I'd be
4 willing to continue to work until the end of the
5 year, but to shift into foreign policy, to be able to
6 leave the White House proper, so I could remove
7 myself from some of the issues that were of
8 sensitivity to me -- I just didn't want to be
9 involved with -- and help them on the foreign policy
10 issues. And I agreed to do that. The President
11 called me and asked me if I would agree to do that,
12 and I said "Yes, I will."

13 BY MR. KRAVITZ:

14 Q So the record is as complete as possible,
15 what is the "background" that you referred to?

16 A I'm sorry?

17 Q You testified that you thought it would be
18 appropriate for you to be gone from the White House.

19 A I had worked as an advisor to three
20 Republican Presidents in the White House.

21 Q Which Presidents were those?

22 A I started with President Nixon, President

1 Ford, and President Reagan.

2 Q What do you do at the Aspen Institute?

3 A Well, in January of this year I began
4 teaching at Duke and was spending a good deal of time
5 in North Carolina. The Aspen Institute very kindly
6 provided a place for me to be here and have a
7 Washington base, as well as administrative support.
8 And I'm helping them in moderating some seminars for
9 the Institute this August.

10 MR. KRULWICH: Can we go off the record
11 for a second?

12 (Discussion off the record.)

13 BY MR. KRAVITZ:

14 Q Just one more question.

15 Are you a registered Republican?

16 A I live in the state of Virginia. The
17 state of Virginia, when I registered, did not
18 register people by party, and I registered at that
19 time as an independent. But I have voted much more
20 often for Republicans than I have for Democrats. I
21 mean, I've had a rather consistent record for a long
22 time in voting much more heavily for Republicans.

1 But I vote the candidate. And since I
2 became a journalist in the 1980s, I tried to develop
3 my own voice in terms of my journalism.

4 MR. KRAVITZ: That's all I have. Thanks.

5 MR. GIUFFRA: I have just really one quick
6 question.

7 FURTHER EXAMINATION

8 BY MR. GIUFFRA:

9 Q As you sit here, Mr. Gergen, do you know
10 whether the FBI accurately transcribed your
11 statements in this document bearing Bates numbers FBI
12 27 and 28?

13 A To the best of my knowledge, the FBI
14 accurately translated my statements. I must tell you
15 that I think it's a summary rather than a verbatim
16 document. It's not a transcript.

17 Q Is it possible, for example, that the time
18 of the meeting -- as you sit here today, do you know
19 that this is the meeting at which there was a
20 unanimous opinion, or is it possible the FBI could
21 have made a mistake in putting that on the statement?

22 MR. KRAVITZ: Are you asking him to

1 speculate?

2 THE WITNESS: I have no basis upon which
3 to say the FBI made a mistake. I think it's unlikely
4 they would make a mistake.

5 MR. GIUFFRA: No further questions. Thank
6 you very much for your cooperation.

7 (Whereupon, at 1:55 p.m., the taking of
8 the instant deposition ceased.)

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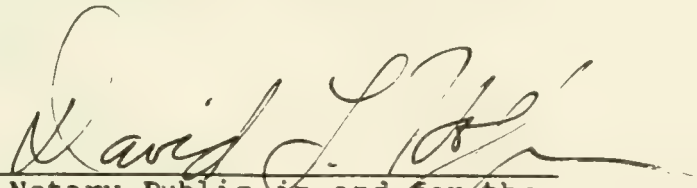
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DAVID R. GERGEN

CERTIFICATE OF NOTARY PUBLIC & REPORTER

174

I, David L. Hoffman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires 6/30/00

**DEPOSITION OF BRUCE R. LINDSEY
IN RE: S. RES. 120**

WEDNESDAY, JULY 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of BRUCE R. LINDSEY, called for examination pursuant to notice of deposition, at 4:00 p.m. in Room 538 of the Dirksen Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.
Majority Chief Counsel
ALICE S. FISHER, Esq.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

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555 Thirteenth Street, NW
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On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|--|-------------|
| Bruce R. Lindsey by Mr. Giuffra | 3 |

1 PROCEEDINGS

2 Whereupon,

3 BRUCE R. LINDSEY

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. GIUFFRA:

8 Q Good afternoon, Mr. Lindsey. My name is
9 Robert Giuffra. I'm chief counsel of the Senate
10 Banking Committee. To my left is Alice Fisher, who
11 is an associate special counsel for the Majority, and
12 further down is Neal Kravitz, who is the principal
13 Democratic deputy special counsel.14 A Principal deputy Democratic special
15 counsel.16 MR. KRAVITZ: Longest title in Washington.
17 I worked hard at it.18 THE WITNESS: Wait until you get to the one
19 I had in 1993.

20 (Laughter.)

21 BY MR. GIUFFRA:

22 Q Mr. Lindsey, would you please state your

4

1 name for the record.

2 A Bruce Lindsey.

3 Q And do you have a middle initial?

4 A R.

5 Q The spelling of your last name?

6 A L-i-n-d-s-e-y.

7 Q Mr. Lindsey, this is a deposition that's
8 being conducted pursuant to Senate Resolution 120, a
9 copy of which I have if you or your counsel would
10 like to see it. This resolution establishes a
11 special committee administered by the Committee on
12 Banking, Housing and Urban Affairs. And this
13 committee has been charged by the Senate with
14 conducting an investigation and public hearings
15 involving Whitewater Development Corporation and
16 Madison Guaranty Savings and Loan Association,
17 Capital Management Services, Inc., the Arkansas
18 development finance authority and other related
19 matters.20 Now, in Section 1.B.1 of Senate Resolution
21 120, there is an authorization for an investigation
22 into "whether improper conduct occurred regarding the

1 way in which White House officials handled documents
2 in the office of White House Deputy Counsel Vincent
3 Foster following his death."

4 Do you understand that this particular
5 provision will be the focus of your deposition today?

6 A Yes.

7 Q We may just -- off the record.

8 (Discussion off the record.)

9 BY MR. GIUFFRA:

10 Q Mr. Lindsey, how did you learn you would be
11 asked to testify here today?

12 A I believe Allen Snyder called me and told
13 me.

14 Q Do you recall when that was?

15 A Two weeks ago, three weeks ago.

16 Q Mr. Snyder is one of your counsel?

17 A Yes, he is.

18 Q This is a deposition which is being held in
19 advance of public hearings that the special committee
20 will hold beginning on July 18. You may be asked to
21 testify, but that hasn't been determined yet. We
22 will advise you in advance, so that you can plan your

1 schedule, whether you will be asked to testify.

2 The procedure today will be as follows: I
3 will ask you a series of questions and then
4 Mr. Kravitz will ask you a series of questions.
5 You'll be testifying under oath. If, at any time,
6 today you don't understand a question or if you find
7 a question confusing, please let us know and we will
8 rephrase the question. There's no attempt being made
9 here to trick anyone or mislead anyone, so if you
10 find a question tricky or misleading, let us know and
11 we'll rephrase the question.

12 If you need a break at any time, again, let
13 us know and we will take a break. The court reporter
14 will prepare a record of the questions and answers.
15 This deposition will be treated as committee
16 confidential until the hearings, meaning that it will
17 not be made public. The deposition will be included
18 in a bound volume that the Committee will prepare, in
19 all likelihood, after these hearings are concluded,
20 and a similar bound-volume record of the proceedings
21 was printed last year when the Committee held similar
22 hearings.

1 We would ask that you keep the substance of
2 your testimony confidential until such time as you're
3 asked to testify, if at all.

4 Senate Resolution 120 specifies that
5 witnesses have a right to be represented by counsel,
6 and I see you are represented by Mr. Nussbaum. If he
7 would state an appearance for the record.

8 MR. NUSSBAUM: For the record, I am Bill
9 Nussbaum on behalf of the deponent, Bruce R.
10 Lindsey.

11 BY MR. GIUFFRA:

12 Q Senate Resolution 120 specifies a procedure
13 for the conduct of depositions. In section 5,
14 paragraph B-7, it provides that if a witness objects
15 to a question and refuses to answer on the basis of
16 relevance, the special committee's staff may proceed
17 with the deposition or may at that time or at a
18 subsequent time seek a ruling on the objection from
19 the chairman. And it specifies if the chairman
20 overrules the objection, the chairman may order and
21 direct the witness to answer the question, but the
22 special committee shall not institute procedures

1 leading to civil or administrative enforcement unless
2 the witness refuses to answer after having been
3 ordered and directed to answer the question.

4 Do you see that in the resolution?

5 A Yes.

6 Q Your counsel may also object to the form of
7 questions and such objections will be noted for the
8 record.

9 You will be given an opportunity to review
10 a transcript of the deposition to correct any errors
11 in transcription. We will be making deposition
12 transcripts available in a secure room at the Senate
13 beginning on July 14, which is four days prior to the
14 start of the hearings. We will also make a copy of
15 the deposition available to your counsel four days
16 prior to any testimony you will be asked to give, and
17 we would ask that you and your counsel keep the
18 deposition transcript confidential.

19 I'm done with the preliminaries. Do you
20 have any questions?

21 A No.

22 MR. NUSSBAUM: Not a one.

1 BY MR. GIUFFRA:

2
3
4 Q Your present business address?

5 A The White House.

6 Q Mr. Lindsey, the Committee has requested
7 that the White House provide any documents that it
8 has bearing on the question of the handling of papers
9 in Mr. Foster's office. Are you aware of this
10 document request?

11 A Yes.

12 Q Insofar as you know, have all documents
13 that might be responsive to this request that are
14 in your possession or control been produced to the
15 Committee?

16 A Yes.

17 Q Mr. Lindsey, what is your present position?

18 A Assistant to the President and deputy
19 counsel.

20 Q Just very briefly, as deputy counsel, do
21 you report to the counsel to the President?

22 A Yes.

10

1 Q Are you part of the counsel's office?

2 A Yes.

3 Q What are your responsibilities as assistant
4 to the President and deputy counsel?

5 A Well, I deal with judicial appointments. I
6 deal with any legal issues that come up in the
7 counsel's office or come to the White House. I'm
8 involved in a lot of policy issues with securities
9 law reform, tort reform. I deal with some
10 international aviation issues, sundry other things, I
11 mean whatever issues are currently pending in the
12 counsel's office.

13 MR. GIUFFRA: Off the record.

14 (Discussion off the record.)

15 BY MR. GIUFFRA:

16 Q Do you have any responsibilities at the
17 White House now that bear on areas outside of the
18 counsel's office?

19 A Well, yes, I'm also a general adviser to
20 the President on a good number of issues. I mean,
21 you know, as a lawyer it's hard to say whether
22 outside the counsel's office or not. Hopefully, I

1 bring my background as a lawyer to that advice as
2 well.

3 Q On July 20, 1993 what was your position at
4 the White House?

5 A Assistant to the President, senior adviser
6 and director of Presidential personnel.

7 MR. KRAVITZ: Got me by a few words there.

8 BY MR. GIUFFRA:

9 Q When did you obtain the position of
10 assistant to the President, senior adviser and
11 director of Presidential personnel?

12 A January 20, 1993.

13 Q When did you become a deputy counsel to the
14 President, approximately?

15 A Approximately winter of '94.

16 Q Did you have a role in the Clinton
17 Presidential campaign?

18 A Yes.

19 Q What was your role?

20 A Campaign director.

21 Q What were the responsibilities of the
22 campaign director?

1 A I basically ran the airplane and was
2 responsible for communication between the campaign
3 headquarters and the airplane, as well as the staff
4 on the airplane.

5 Q Now, as of -- strike that.

6 Between January 20, 1993 and July 20, 1993,
7 what were your responsibilities as assistant to the
8 President, senior adviser and director of
9 Presidential personnel?

10 A Well, my responsibility as director of
11 Presidential personnel was to fill the positions,
12 sub-Cabinet positions in the government. That's
13 deputy secretaries, assistant secretaries, SES
14 positions and schedule C positions. Assistant to the
15 President is more of -- I don't want to say "rank,"
16 but really we have assistants to the President,
17 deputy assistants to the President and special
18 assistants to the President in all areas, so that it
19 really doesn't reflect any particular duties. As a
20 senior adviser, again, it was a general advisory
21 position.

22 Q Where was the location of your office as of

1 July 20, 1993?

2 A First floor of the west wing.

3 Q Do you have the same office now that you
4 had at that time?

5 A No, I'm now on the second floor of the west
6 wing.

7 Q Are you presently in the counsel's suite?

8 A No, I'm across from it.

9 Q What was your office telephone number as of
10 July 20, 1993?

11 A 456-2668.

12 Q Did you have any other telephone numbers
13 persons might have been able to contact you on at
14 that time?

15 A Yeah, I had a private number that rings
16 directly into my office. I'm not quite sure what it
17 was then.

18 Q Did you attend senior staff meetings in the
19 period June/July 1993?

20 A Yes.

21 Q Those would have been the meetings held in
22 the Roosevelt Room with the Chief of Staff every

1 morning?

2 A Yes.

3 Q And in your capacity as assistant to the
4 President, senior adviser and director of
5 Presidential personnel, did you report to the Chief
6 of Staff or to the President?

7 A Both.

8 Q Could you just briefly describe your
9 relationship with Vincent Foster?

10 A He was a friend. I have known him for --
11 oh, I don't know, we both practiced law in Little
12 Rock together, so -- I started practicing -- I came
13 back to Little Rock in 1981, so I've known him for at
14 least 14 years, 13 years.

15 Q Did you and Mr. Foster practice law at the
16 same law firm?

17 A No.

18 Q Were you co-counsel on cases together?

19 A The only cases we would be co-counsel on --
20 well, one, Vince represented our law firm in
21 malpractice work. Two, when I got involved -- I was
22 counsel to the Democratic Party of Arkansas, and when

1 I got involved in the Presidential campaign, there
2 would be times when I would not be able to file a
3 pleading or enter an appearance on behalf of the
4 party involving litigation, and Vince handled some of
5 that for me.

6 Q This would be during the period 1991/1992?

7 A Correct.

8 Q Maybe we should just do this just so the
9 record is clear. Prior to joining the White House in
10 January 20, 1993, what position did you hold,
11 campaign director on the campaign?

12 A Right. I was an attorney in the law firm
13 of Wright, Lindsey & Jennings in Little Rock,
14 Arkansas.

15 Q And for how long had you been at the firm
16 of Wright, Lindsey & Jennings?

17 A I started in 1975 and was there from 1975
18 to November of 1978, and then I came back in November
19 of 1981 and was there until January of 1993.

20 Q Where were you between 1978 and 1981?

21 A I was legislative director to Senator David
22 Pryor.

1 Q Did Vince Foster have a role during the
2 1992 Clinton Presidential campaign?

3 A No.

4 Q Did he perform any work on the campaign,
5 even on the volunteer nature?

6 A Not that I'm aware of.

7 Q Did you have any understanding as to
8 whether prior to January 20, 1993, Mr. Foster had
9 performed legal services for President or
10 Mrs. Clinton?

11 A Well, I knew that he and Hillary were law
12 partners. I don't know if I knew that he had
13 actually performed, you know, formal legal services
14 for them.

15 Q Do you know whether Mr. Foster had any role
16 in connection with the preparation of President
17 Clinton's financial disclosure form that was filed
18 with the Federal Election Campaign Commission during
19 the 1992 campaign?

20 A No, I don't.

21 Q Do you recall a time during the 1992
22 campaign when the President's financial disclosure

1 form was amended to reflect his investment in
2 Whitewater Development Corporation?

3 A Yes.

4 Q Could you just briefly describe the
5 circumstances upon which the President's financial
6 disclosure form was amended during the 1992 campaign?

7 MR. NUSSBAUM: At this point, I would raise
8 an objection. I appreciated the statement you made
9 off the record at the beginning about the scope of
10 this as I had understood it. My understanding of the
11 scope is to determine the circumstances under which
12 documents were removed, if at all, from the office of
13 Mr. Foster.

14 MR. GIUFFRA: Off the record for a second?

15 MR. NUSSBAUM: I'd like to stay on the
16 record for a second. It seems to me that -- I
17 understand that there may be some need to go a little
18 bit beyond that in order to get where you're going,
19 but this kind of questioning now in which you have
20 not made any attempt to connect it with the general
21 subject of this inquiry in any way that's apparent to
22 me sitting here I think is objectionable.

1 MR. GIUFFRA: Off the record.

2 (Discussion off the record.)

3 BY MR. GIUFFRA:

4 Q Do you recall persons who played any role
5 whatsoever in connection with the decision to amend
6 the President's financial disclosure form during the
7 1992 Presidential campaign to reflect his investment
8 and the First Lady's investment in Whitewater
9 Development Corporation?

10 A Yes -- I mean, I guess. David Ifshin was
11 the counsel at that time to the campaign committee.
12 At some point, and I've read press reports that
13 indicated that Mrs. Clinton got a renewal notice from
14 the Prairie County Bank on the loan and realized that
15 it had not been reported and, you know, brought it to
16 someone's attention. You know, I dealt primarily
17 with David Ifshin, I think, about it at the time.

18 Q Do you know the names of any of the other
19 people who might have played a role in connection
20 with --

21 A No.

22 Q -- this amendment?

1 A No.

2 Q Do you know whether Mrs. Clinton spoke to
3 Mr. Foster about this amendment?

4 A No.

5 Q Do you know whether -- strike that.

6 When did you first learn of President and
7 Mrs. Clinton's investment in Whitewater Development
8 Corporation?

9 MR. NUSSBAUM: Again, I'm going to object
10 on the grounds of pertinence. I don't understand,
11 and I'm going to let him answer this, but I don't
12 know how far you're going to go with this. Although
13 I suppose someday somebody is going to ask somebody
14 about Whitewater, it really hasn't happened yet. And
15 this is about --

16 MR. GIUFFRA: That's what we're trying --

17 MR. NUSSBAUM: No, no, no, this is about
18 the circumstances of removal of documents from
19 Mr. Foster's office. What he learned or what he
20 knows about Whitewater is, I suspect, going to be the
21 subject of hearings at other times or depositions at
22 other times, but I'll let you answer this one.

1 THE WITNESS: Let me back up because I
2 think I misanswered the last one. I don't know
3 whether I know whether or not the financial
4 disclosure form was amended to reflect an investment
5 in Whitewater. I remembered it was amended to
6 reflect campaign loans from the 1990 campaign that
7 were still outstanding at that time, so I'm not sure
8 I knew that the financial disclosure form was amended
9 in 1992 to reflect an investment in Whitewater.

10 I think I first learned of Whitewater
11 probably the night before Jeff Gerth's article
12 appeared in The New York Times, in, I think, late
13 March of 1992.

14 BY MR. GIUFFRA:

15 Q Did you ever discuss Whitewater Development
16 Corporation with Mr. Foster?

17 A No, not that I recall.

18 Q Do you have any knowledge as to whether --
19 strike that.

20 Now, after Whitewater Development
21 Corporation became an issue during -- strike that,
22 too.

1 Did Whitewater Development Corporation
2 become an issue during the 1992 Presidential
3 campaign?

4 A Yes.

5 Q That would be approximately the time this
6 article appeared in the New York Times?

7 A Correct.

8 Q Who on the campaign responded to either
9 press -- press inquiries with regard to Whitewater
10 Development Corporation and just generally the
11 investigation into the matter of Whitewater
12 Development Corporation?

13 MR. NUSSBAUM: Again, I'm going to object
14 on pertinency grounds. I'll let him answer it, but
15 I'm not comfortable with where this is, the scope of
16 his deposition.

17 MR. KRAVITZ: I object as well. There's
18 already been testimony that Mr. Foster was not
19 involved, at least to this witness's knowledge, in
20 the campaign, any aspect of the campaign, and it's
21 hard for me to understand how this question is
22 relevant to what was in Mr. Foster's office or

1 anyone's understanding of what was in Mr. Foster's
2 office.

3 BY MR. GIUFFRA:

4 Q Your answer to the question?

5 MR. NUSSBAUM: Answer that question. Do
6 you remember it?

7 THE WITNESS: Yeah. Those are two separate
8 questions, I think. Unlike now, basically when the
9 press asked questions during the campaign, the
10 candidate answered the question, so I think the real
11 answer is the person who responded to questions about
12 Whitewater was the President. I probably spoke on it
13 some more on background than on directly. I assume
14 Dee Dee Myers, who was our press secretary, may have
15 responded sometime.

16 Your second question was who looked into
17 Whitewater, which is basically a different question.
18 We had a lawyers committee, and Jim Lyons, who was a
19 member of that lawyers committee, I think, was tasked
20 with looking into the issue.

21 BY MR. GIUFFRA:

22 Q Do you recall anyone else who was tasked

1 with looking into the issue?

2 A Oh, there were other people in the campaign
3 who assisted him. I don't know if independently.
4 There were two or three other lawyers we had in the
5 campaign who worked with him. Ultimately, we hired
6 an accounting firm to look at it.

7 Q Do you have any understanding as to the
8 relationship between Mr. Lyons and Mr. Foster?

9 A At that time or since?

10 Q Since.

11 A They became friends.

12 Q Did they become friends during the course
13 of the campaign?

14 A No, actually, I believe that Jim Lyons had
15 a client that had an issue before the Public Service
16 Commission in Arkansas and that -- I believe this is
17 right -- no, that's not right. I take that back. It
18 was a lawyer in my firm who was his local counsel.

19 I don't know when they became friends.

20 Q But it was your understanding that
21 Mr. Lyons and Mr. Foster were friends?

22 A It's not my understanding they were friends

1 before the '92 campaign. It is my understanding that
2 through the '92 campaign and after the '92 campaign
3 they became friends, yes.

4 Q Was Mr. Foster a member of the lawyers
5 committee during the '92 campaign?

6 A I don't remember. I don't believe so.

7 Q And would it be your testimony you have no
8 knowledge as to whether Mr. Lyons ever spoke to
9 Mr. Foster about Whitewater Development Corporation?

10 A I would have no knowledge of that. As part
11 of his investigation?

12 Q In any capacity.

13 A Are you talking about '92 or at any point?

14 Q Do you have any understanding as to whether
15 Mr. Lyons ever spoke with Mr. Foster about Whitewater
16 Development Corporation at any time prior to
17 Mr. Foster's death?

18 A I do now, yes.

19 Q When was it that Mr. Lyons spoke to
20 Mr. Foster about Whitewater Development Corporation?

21 A I believe at some point Vince asked for a
22 copy of the Lyons Commission report, the Lyons

1 report, and Jim sent it to him.

2 Q Do you recall the approximate time at which
3 Mr. Foster made this request?

4 A No, I don't think I knew it at the time.

5 Q Was it before or after President Clinton
6 became President?

7 A I believe it was after.

8 Q And do you know why Mr. Foster requested a
9 copy of the Lyons report?

10 A No, no. Well, I think -- I believe that it
11 was in connection with financial disclosure reports
12 that the President had to make as President.

13 Q Was it your understanding that as of July
14 20, 1993, Mr. Foster had a role in connection with
15 the President's financial disclosure?

16 A I don't know if I knew that or not. I
17 mean, I knew, you know, that -- well, I don't know if
18 I had ever given any thought to who in the counsel's
19 office was dealing with financial disclosure. I knew
20 that he was filing one, but whether I ever sort of
21 focused that it would have been Vince -- if I had
22 thought about it, I probably would have assumed that,

26

1 but I don't know if I ever thought about it.

2 Q Why would you have assumed it would have
3 been Mr. Foster?

4 A Simply because of his relationship to the
5 Clintons.

6 Q It would be your testimony that Mr. Foster
7 had a close relationship with the President and
8 Mrs. Clinton?

9 A Yes.

10 Q As of July 20, 1993, did you have any
11 understanding as to whether Mr. Foster had any role
12 in connection with the President and Mrs. Clinton's
13 tax returns?

14 A It would be the same answer. I don't know
15 if I'd ever focused on it, but if I had, I would have
16 assumed that he would have.

17 Q As of the time of Mr. Foster's death, did
18 you have any understanding as to whether he had
19 handled any personal legal matters for President and
20 Mrs. Clinton?

21 A No.

22 Q Did you ever discuss Whitewater Development

1 Corporation with Mr. Foster?

2 A No.

3 Q Did you have any knowledge as of the time
4 of Mr. Foster's death that he maintained files
5 bearing on the President and Mrs. Clinton's personal
6 legal matters?

7 A No.

8 Q Did you have any knowledge at the time of
9 Mr. Foster's death that he maintained documents
10 bearing on Whitewater Development Corporation?

11 A No.

12 MR. GIUFFRA: Off the record.

13 (Discussion off the record.)

14 BY MR. GIUFFRA:

15 Q What was Mr. Foster's role during the
16 transition?

17 A He served as one of our vetters. A vetter
18 is a person as we were looking at Cabinet officials
19 who would do a background investigation, look at
20 their tax returns and other matters to determine
21 whether or not there were any problems with us
22 nominating him.

1 Q Did Mr. Foster work on a full-time basis as
2 a vetter or was this something he did while
3 maintaining his practice?

4 A No, he maintained his practice.

5 Q Would you have been the person primarily
6 responsible for the vetting of Cabinet appointments
7 during this period?

8 A No, I was involved in selection of Cabinet
9 officials, but I was not directly involved in the
10 vetting, other than to receive reports.

11 Q Do you recall -- strike that.

12 Do you recall more specifically what
13 Mr. Foster's role was with regard to the vetting of
14 Cabinet appointees?

15 A No.

16 Q Do you recall the names of any Cabinet
17 appointees who he may have taken a look at?

18 MR. NUSSBAUM: I'm going to just object
19 now. You're calling upon -- I don't know what the
20 answer to this question is. I don't know whether
21 Mr. Lindsey knows and maybe if he doesn't know then
22 this objection is useless, but -- or meaningless, but

1 it seems to me that you're now asking him to disclose
2 things, for example, that is White House information
3 that I don't understand him to have waived here.

4 MR. GIUFFRA: Again, I do not want to get
5 into the business of lengthy responses on the record
6 for myself, you can object all you want. I think
7 that whatever information this witness has as to what
8 Mr. Foster's role was, either as deputy White House
9 counsel or during the transition, is relevant to the
10 types of documents he might have had in his office
11 and motives people might have had to remove those
12 documents. That's the purpose and the reason why I'm
13 asking this question.

14 MR. NUSSBAUM: On that theory, if that's
15 your theory, then I can't imagine a question that by
16 your definition is not relevant and clearly that
17 can't be so. I mean, if, for example, you want to
18 know what Foster's job was, Mr. Lindsey has told
19 you. To ask, for example, who Foster vetted and
20 perhaps for you to find that he vetted someone who
21 didn't get the job is, frankly, nobody's business.
22 It just seems to me that you haven't asked him yet

1 what documents, if any, he's aware of that Foster had
2 in his office and whether he knows if anyone took
3 them or who took them, why, any of that. You haven't
4 done any of that.

5 If the purpose of this is to come around
6 backwards and ask questions about who Foster was
7 vetting and everything that Foster was doing, then I
8 think it's a bit far afield and I do not think it is
9 within the scope.

10 MR. GIUFFRA: Are you instructing the
11 witness not to answer the question?

12 MR. NUSSBAUM: I don't know what his answer
13 will be yet. I mean if he doesn't know then I'd just
14 as soon him answer. I don't really want to get to
15 the point of instructing him not to answer, but if
16 you're asking him questions -- if you're asking him a
17 question that would require him to reveal the names
18 of individuals other than, for example, those who
19 were selected who were under consideration for
20 Cabinet appointments, I think that we need some
21 guidance from the White House before he'll answer a
22 question like that. I think that's privileged

1 information. I can't instruct him to answer or not
2 to answer. I'll take my instruction from White House
3 counsel on that. If you want to go off the record
4 and call her, you can call her -- what was the
5 question?

6 (The reporter read the record as requested.)

7 MR. GIUFFRA: Off the record.

8 (Discussion off the record.)

9 THE WITNESS: No.

10 BY MR. GIUFFRA:

11 Q Do you recall anything more about what role
12 Mr. Foster played during the transition?

13 A Other than that he helped vet people?

14 Q Yes.

15 A No.

16 Q It's your testimony you don't recall any of
17 the names of any of the people who he might have
18 vetted?

19 A No, that wasn't my response. I don't
20 recall any of any Cabinet officers that he vetted.

21 Q Do you recall the names of any sub-Cabinet
22 officers who Mr. Foster might have vetted?

1 A No.

2 Q Do you recall the names of anyone who
3 Mr. Foster may have vetted during the course of the
4 transition?

5 A Yes.

6 MR. NUSSBAUM: Now we're at the point now
7 that he's answered yes and your follow-up question --
8 if your follow-up question is going to be who, then I
9 would ask you to call White House counsel's office.

10 BY MR. GIUFFRA:

11 Q Let me ask the next question and we may be
12 able to avoid this problem. Do you recall whether
13 Mr. Foster vetted anyone who subsequently attained a
14 position in the Administration?

15 A Yes.

16 Q Let's see how far we can go. Maybe we can
17 avoid having to call.

18 MR. NUSSBAUM: Okay.

19 BY MR. GIUFFRA:

20 Q Was this more than one person?

21 A Only one person I remember.

22 Q Did this person attain a position on the

1 White House staff?

2 A Yes.

3 MR. GIUFFRA: Off the record.

4 (Discussion off the record.)

5 MR. NUSSBAUM: Ask your question. He'll
6 give you this one.

7 BY MR. GIUFFRA:

8 Q Who was the person Mr. Foster vetted?

9 A Harold Ickes.

10 Q Do you recall when Mr. Foster vetted
11 Mr. Ickes?

12 A Yeah. There was an issue that came up, I
13 think it's pretty public, that Harold was in line to
14 be a Deputy Chief of Staff. An issue came up about
15 his law firm in New York and some clients they
16 represented who were apparently under investigation.
17 Vince vetted that issue at the time until the matter
18 was cleared up and sometime later, after Mr. Foster's
19 death, Mr. Ickes was not appointed deputy White House
20 counsel. He later, obviously, came in as deputy
21 White House counsel after the matter, which was
22 fairly public -- it involved a union that his law

1 firm represented -- there was some sort of special
2 master's report that cleared the law firm of any
3 involvement or illegal or improper activity.

4 MR. KRAVITZ: Do you mean Deputy Chief of
5 Staff?

6 THE WITNESS: What did I say?

7 MR. KRAVITZ: You said White House
8 counsel.

9 THE WITNESS: I'm sorry. Deputy Chief of
10 Staff. Thank you.

11 BY MR. GIUFFRA:

12 Q Do you have any knowledge as to whether
13 Mr. Foster vetted Webster Hubbell?

14 A I don't think so. I have no knowledge on
15 that.

16 Q What was your understanding of Mr. Foster's
17 areas of responsibility as deputy White House
18 counsel?

19 A I don't know if I had any. I mean, other
20 than he was Bernie's deputy and Bernie had described
21 him as co-counsel, but I don't know if I knew that he
22 had specific responsibility of anything.

1 I have a better understanding of what a
2 deputy White House counsel does now than I probably
3 did in January through July of 1993.

4 Q Did you visit Mr. Foster in his office
5 prior to his death?

6 A I'm sure I did, yes.

7 Q Do you recall whether you regularly visited
8 Mr. Foster's office prior to his death?

9 A No, I did not.

10 Q Did you regularly communicate by telephone
11 with Mr. Foster prior to his death?

12 A No, I wouldn't say I did.

13 Q Do you recall whether Mr. Foster maintained
14 a neat office or a messy office?

15 A I don't recall. Vince was basically a neat
16 person.

17 Q Organized?

18 A Yes.

19 Q Do you know someone by the name of Maggie
20 Williams?

21 A Yes.

22 Q Do you have any understanding as to the

1 extent -- strike that.

2 What is Maggie Williams -- what was Maggie
3 Williams's position at the White House as of July 20,
4 1993?

5 A She was and is the chief of staff to the
6 First Lady.

7 Q Do you have any understanding as to the
8 extent of contacts between Mr. Foster and
9 Ms. Williams prior to Mr. Foster's death?

10 A No.

11 MR. NUSSBAUM: How about after?

12 THE WITNESS: I was going to say.

13 MR. NUSSBAUM: Sorry.

14 BY MR. GIUFFRA:

15 Q When did you learn of Mr. Foster's death?

16 A Sometime in the evening of July 20.

17 Q Where were you?

18 A In my office.

19 Q This would be in the west wing?

20 A Uh-huh.

21 Q Who contacted you?

22 A I think Bill Burton.

1 Q What did Mr. Burton say?

2 A I believe he told me that they have found a
3 body and that it had Vince's ID on it.

4 Q What did you do next?

5 A I don't think I believed it. You know, at
6 that point I don't know if we had confirmation, so I
7 don't think I did anything.

8 Q Did there come a time when you went to the
9 residence?

10 A Yeah, at some point later on I think we
11 became convinced that it had occurred. I called some
12 people in the White House who I thought should know.
13 The President at some point was doing a Larry King
14 Live from the ground floor of the residence and at
15 some point I went over there.

16 Q Did you remain at the White House that
17 evening or did you go to the Foster home?

18 A I did not go to the Foster home. I
19 remained at the White House.

20 Q You went to the residence; correct?

21 A Went to the residence, the White House
22 residence, yes, ground floor.

1 Q Did you then go to the map room?

2 A Yes.

3 Q Do you recall who was in the map room?

4 A No, I mean a lot of people in and out, but
5 I don't remember particularly who.

6 Q Did anyone ask you to do anything?

7 A No.

8 Q Do you recall, did you return to your
9 office?

10 A Yes.

11 Q Did you go to the Chief of Staff's suite of
12 offices?

13 A His office would have been across from
14 mine. I don't know if I was in there or not.

15 Q Do you recall noticing any activity in the
16 Chief of Staff's office on the evening of
17 Mr. Foster's death?

18 A No. The only activity I remember was
19 people crying.

20 Q Do you recall whether there was any
21 discussion on the evening of Mr. Foster's death of
22 the need to try to find a suicide note?

- 1 A No.
- 2 Q Did you see -- strike that.
- 3 Did you later see Mr. Burton on the evening
- 4 of Mr. Foster's death?
- 5 A I saw Bill off and on, I think, during the
- 6 evening. I don't have any recollection when I saw
- 7 him or anything he said.
- 8 Q Do you have any recollection of any
- 9 discussion with regard to the need to seal
- 10 Mr. Foster's office?
- 11 A No.
- 12 Q Do you recall any discussion of the need to
- 13 retrieve any trash in Mr. Foster's office?
- 14 A No.
- 15 Q Do you have any knowledge as to anyone,
- 16 other than from press accounts, entering Mr. Foster's
- 17 office on the night of his death?
- 18 A Other than from press accounts?
- 19 Q Yes.
- 20 A No.
- 21 Q So it would be your testimony that you
- 22 never discussed with Mr. Nussbaum whether he entered

- 1 Mr. Foster's office on the night of his death?
- 2 A I don't think we did.
- 3 Q Do you know who Patsy Thomasson is?
- 4 A Yes.
- 5 Q Who is Patsy Thomasson?
- 6 A At the time, Patsy Thomasson was director
- 7 of administration. Patsy is from Arkansas.
- 8 Q Did she have some responsibility for
- 9 security at the White House during this period?
- 10 A I think security is under the office of
- 11 administration, yes.
- 12 Q Have you ever discussed with Ms. Thomasson
- 13 whether she entered Mr. Foster's office on the night
- 14 of his death?
- 15 A I don't think so.
- 16 Q Have you ever discussed with Maggie
- 17 Williams whether she entered Mr. Foster's office on
- 18 the night of his death?
- 19 A I don't believe so.
- 20 (Recess.)
- 21 BY MR. GIUFFRA:
- 22 Q Have you ever spoken with Ms. Thomasson

1 about whether she entered Mr. Foster's office on the
2 night of his death?

3 A I don't believe so, no.

4 Q Have you ever spoken to anyone about
5 whether any person entered Mr. Foster's office on the
6 night of his death?

7 MR. NUSSBAUM: Other than his lawyers?

8 BY MR. GIUFFRA:

9 Q Other than your counsel.

10 A Yes.

11 Q Do you recall who you might have spoken to
12 about whether anyone entered Mr. Foster's office on
13 the night of his death?

14 A Do I remember who I spoke to?

15 Q Yes.

16 A Yes.

17 Q Who did you speak to?

18 A Cheryl Mills.

19 Q Who is Cheryl Mills?

20 A She's an associate counsel in the White
21 House counsel's office.

22 Q When did you speak to Cheryl Mills?

1 MR. NUSSBAUM: To the extent, as I
2 understand it, in the White House counsel's office
3 they have waived privilege with respect to the events
4 that surround the death of Mr. Foster and questions
5 regarding his office and things relating to that, but
6 have not waived any privileges with respect to steps
7 that the White House has taken in response to
8 inquiries, either from your committee or from the
9 Independent Counsel. So to the extent that the
10 discussion that you had -- that Mr. Lindsey had with
11 Ms. Mills, I suppose to any extent in the absence of
12 some waiver from the White House counsel, I don't see
13 how he is in a position to answer that.

14 MR. KRAVITZ: I think if they just were
15 chatting on the sidewalk and it had nothing to do
16 with the White House counsel's investigation or
17 review for some investigation, I would disagree with
18 that, but if it had something to do with the White
19 House counsel's office investigation, I think Bill's
20 objection is proper.

21 MR. GIUFFRA: Off the record.

22 (Discussion off the record.)

1 MR. GIUFFRA: The assertion of this
2 objection has been done in a very haphazard way and
3 the record will reflect that numerous witnesses have
4 been asked questions about their discussions with
5 people from the White House counsel's office in
6 connection with the White House counsel's office's
7 attempt to ascertain what happened on the night of
8 Mr. Foster's death.

9 MR. GIUFFRA: Do you want to instruct him
10 not to answer the question?

11 MR. NUSSBAUM: I can't do that. What I can
12 do is if I think it is appropriate I could ask that a
13 waiver -- if there's a privilege, then that privilege
14 can only be waived by the holder of the privilege,
15 which would not be Mr. Lindsey. You have not
16 established the circumstances under which the
17 discussion between Mr. Lindsey and Ms. Mills took
18 place.

19 We do know that Ms. Mills is a member of
20 the White House counsel's office and Mr. Lindsey is a
21 member of the White House counsel's office and it is
22 reasonable to assume, without knowing any more, that

1 there may be some privileged attached to that
2 discussion. I don't know any more than that.

3 BY MR. GIUFFRA:

4 Q Fair enough. When did you speak to
5 Ms. Mills?

6 A Oh, probably either this year or late last
7 year.

8 Q What was the context in which you spoke
9 with Ms. Mills?

10 A I believe she had been asked to go to an
11 interview with Independent Counsel's office, and I
12 believe the reason why she was asked, I think she
13 told me, was that someone thought that she had been
14 in the office or that was an issue.

15 Q What did Ms. Mills say to you?

16 A That I don't remember. I don't remember
17 whether we even went beyond that. She was just
18 telling me that she was going to have to go to an
19 interview with the Independent Counsel's office
20 because that issue had been -- that had been raised.

21 Q So it would be your testimony that other
22 than from press accounts, you have no knowledge as to

1 whether anyone entered Mr. Foster's office on the
2 night of his death?

3 A That's correct.

4 (Witness conferred with counsel.)

5 BY MR. GIUFFRA:

6 Q Do you wish to supplement the record in any
7 way?

8 A No, I'm fine.

9 Q Do you have any knowledge as to whether any
10 documents were removed from Mr. Foster's office on
11 the night of his death?

12 A Other than press reports?

13 Q Yes.

14 A No. Well, I guess there are no press
15 reports that documents were removed on the night of
16 his death, so I have no knowledge that documents were
17 removed on the night of his death.

18 Q So as far as you know, no documents were
19 removed from Mr. Foster's office on the night of his
20 death?

21 A Correct.

22 Q Do you have any knowledge as to whether a

1 request was made to seal Mr. Foster's office on the
2 night of his death?

3 A No, other than press reports.

4 Q When did you arrive at the White House on
5 the day after Mr. Foster's death?

6 A I have no idea.

7 Q Before we go any further, do you have any
8 recollection of the phone calls that you made on the
9 night of Mr. Foster's death from your office?

10 A Whom I called?

11 Q Yes.

12 A I called Deb Coyle, who is my assistant. I
13 called John Emerson, who was my deputy in the office
14 of Presidential personnel. I called Kevin O'Keefe,
15 who I guess by then was working -- yeah, I took him
16 home that night. I called Kevin O'Keefe, who was
17 working in the White House in the office of
18 Presidential personnel. I probably called my wife.
19 I talked to my daughters. Beyond that I don't
20 recall.

21 Q With regard to July 21, the day after
22 Mr. Foster's death, did you attend the senior staff

1 briefing, or meeting?

2 A I don't recall.

3 Q Do you know Craig Livingstone?

4 A Yes.

5 Q Who is Craig Livingstone?

6 A Is he -- his title may be director of
7 security. I'm not sure. He's basically responsible
8 for passes and making sure that the people -- proper
9 security checks are made on those people who have
10 White House passes.

11 Q Did you see Mr. Livingstone carrying a box
12 in the west wing on the morning of July 21?

13 A No.

14 Q Do you have any knowledge as to whether
15 Mr. Livingstone was carrying a box in the west wing
16 on the morning of July 21?

17 A No.

18 Q Did there come a time on July 21 when you
19 learned that the Park Police were investigating
20 Mr. Foster's death?

21 A I don't -- there was a time when I became
22 aware of that. I don't remember whether it was on

1 the 21st or not.

2 Q Do you recall attending any briefings with
3 Park Police officials?

4 A No.

5 Q At any time?

6 A No.

7 Q Do you have any knowledge as to whether the
8 Park Police provided a briefing at the White House on
9 the date after Mr. Foster's death?

10 A No.

11 Q Did you visit the White House counsel's
12 office on July 21?

13 A I don't think so.

14 Q Do you recall speaking with James Lyons on
15 July 21?

16 A I reviewed my telephone record and it
17 reflects that I did, but I don't remember it now.

18 Q Was Mr. Lyons someone who you regularly
19 communicated with during this period, June and July
20 of 1993?

21 A Jim Lyons and I are friends. Usually my
22 communication with Jim would relate to when he was

1 coming to town, we would usually have dinner together
2 regularly -- I mean, it would not be unusual for me
3 to communicate with him, but it wouldn't be regular
4 and it wouldn't relate, for the most part, to any
5 business purpose.

6 Q Is Mr. Lyons still a friend?

7 A Oh, yes.

8 Q Has Mr. Lyons ever indicated to you that
9 Mr. Foster was handling anything with regard to
10 Whitewater Development Corporation?

11 A Has Mr. Lyons ever indicated to me that
12 Mr. Foster was handling anything with regard to
13 Whitewater. No.

14 Q Did you find the question confusing?

15 A Well, I take that back.

16 Q Go ahead, I'm sorry.

17 A I think Mr. Lyons is the person that told
18 me he sent a copy of the Lyons report to Mr. Foster,
19 but beyond that, you know, the answer, I think, is
20 no.

21 Q And that's up to the present?

22 A Yes.

1 Q So it would be your testimony you recall no
2 conversations other than the conversation relating to
3 the sending of the Lyons report to Mr. Foster in
4 which Mr. Lyons discussed speaking with Mr. Foster
5 about Whitewater?

6 A Correct.

7 MR. GIUFFRA: Off the record.

8 (Discussion off the record.)

9 BY MR. GIUFFRA:

10 Q Do you recall speaking with Mr. Nussbaum on
11 the day after Mr. Foster's death?

12 A I'm sure I did. I don't recall. I mean, I
13 don't have any specific memory of it.

14 Q Do you have a general recollection of
15 speaking with Mr. Nussbaum?

16 A Bernie spoke at a service that was done I
17 think at noon for all the White House staff. The
18 President spoke at it and Bernie spoke at it, and I
19 thought Bernie's remarks were appropriate. I
20 probably -- if I didn't say something to him that
21 day, I would have said something to him the next day,
22 or someday, that I appreciated what he said.

1 Q I apologize for a second. What was the
2 context in which Mr. Lyons advised you that he had
3 sent a copy of the Lyons report to Mr. Foster?

4 A Later. This was after October, I guess,
5 November, after the press reports.

6 Q This would be '93?

7 A Of '93. I think it was like October 30,
8 perhaps, where I believe it's Sue Smith, but I'm not
9 sure of who wrote the first story for The Post that
10 sort of brought this back, I got a copy of both -- I
11 don't know if I -- before that whether I had a copy
12 of what I call the longer version, which is the --
13 the longer version of the Lyons report, from Jim, and
14 it had on there "not released" or "not released to
15 the public" or something. At some point, Jim
16 indicated to me that he had sent those to Vince and
17 that he wrote that on the copies so Vince would know
18 which version had been released to the press and
19 which version had not.

20 So by his explaining to me what that
21 notation was on the document, he explained to me that
22 he had sent them to Vince.

1 Q Did Mr. Lyons indicate to you why he sent a
2 copy of the report to Mr. Foster?

3 A No.

4 Q And you didn't have any interest in finding
5 out why he might have sent it to Mr. Foster?

6 A No, I mean -- no, I mean, I think he
7 indicated Vince had asked for it maybe, but I don't
8 have any specific memory of that.

9 Q But you had no interest in trying to find
10 out why Mr. Foster was receiving a copy of this
11 report?

12 A No.

13 Q Do you recall any discussion on either July
14 21 or July 22 with regard to the process that would
15 be used to review documents in Mr. Foster's office?

16 A Again, I don't remember the date. I would
17 have thought it was neither one of those dates, but I
18 had a conversation about the process.

19 Q When do you recall having this conversation
20 about the process that would be used to review the
21 documents in Mr. Foster's office?

22 A Again, I think it was on the date that the

1 documents were reviewed.

2 Q With whom did you have this conversation?

3 A Bernie, Bill Burton, I believe Jack Quinn
4 was in the room, and I don't remember anybody else.
5 There may have been others.

6 Q And where was this meeting held?

7 A I believe it was in Mack McLarty's office.

8 Q Was Mr. McLarty present?

9 A I don't have a -- I don't recall that, but
10 he could well have been. I just don't recall.

11 Q Do you recall, am I correct that the Chief
12 of Staff's suite is next to the Vice President's
13 suite?

14 A Yes.

15 Q Mr. Quinn works for the Vice President?

16 A Right.

17 Q Do you recall the meeting shifting from the
18 Chief of Staff's office to Vice President's office?

19 A Vaguely.

20 Q Was this a meeting that was an organized
21 meeting or just sort of a coming-together of people?

22 A Oh, --

1 Q Did someone call you and say we're getting
2 together to discuss the process for review of
3 documents in --

4 A I think Bernie probably said we're going to
5 talk about this, why don't you join us, but I
6 don't -- I don't know how the people were selected
7 and why us, you know. I mean -- so both organized
8 and unorganized. I don't think anybody who had just
9 dropped in would have been invited to join the
10 conversation. On the other hand, I'm not sure quite
11 why the four or five of us were there.

12 Q What do you recall about this conversation
13 with Mr. Nussbaum, Mr. Burton and Mr. Quinn about the
14 process that would be used to review the documents in
15 Mr. Foster's office?

16 A Well, there were questions raised, and I
17 think probably Bernie raised them, about privilege
18 issues about the documents and what -- how we could
19 be both helpful in allowing the Park Police to do
20 their job and also protect whatever privilege issues
21 might be raised. And we had back and forth about
22 different ways to do it. I don't, frankly, remember

1 what the different ideas were, but sort of the bottom
2 line was we decided we couldn't sort of -- we
3 couldn't figure it out. We should sort of play it by
4 ear and Bernie would have to use his best judgment as
5 to what he did and how much access they had, what he
6 showed them and so forth.

7 Q Now, it's your recollection that this
8 meeting occurred before the actual review of the
9 documents in Mr. Foster's office?

10 A I thought so, yes, as opposed to after,
11 yeah.

12 Q It would have been in the morning?

13 A Either morning or around noon.

14 Q Do you recall about how long this meeting
15 lasted?

16 A No. 30, 45 minutes maybe.

17 Q Did Mr. Nussbaum do most of the talking at
18 this meeting?

19 A No, I don't think so. I mean, I think Bill
20 Burton had some views on the budget. I don't know
21 whether I did. I think in the end I concurred or
22 agreed that it was awful hard to sort of figure it

1 out on the front end without us knowing or at least
2 without me knowing what we were talking about and
3 that Bernie would just have to use his judgment as to
4 what to do.

5 Q Were the participants at the meeting
6 advised by anyone as to what the contents of the
7 documents in Mr. Foster's office were?

8 A I don't remember that.

9 Q Was there any discussion that Mr. Foster's
10 office contained documents that related to the
11 President and First Lady's personal legal matters?

12 A I don't think so. I don't remember that.

13 Q Do you recall ever discussing with
14 Mr. Nussbaum whether Mr. Foster's office contained
15 documents bearing on the personal legal matters of
16 the President and First Lady?

17 A No.

18 Q Have you ever discussed anything relating
19 to the documents that were contained in Mr. Foster's
20 office with the President?

21 A No.

22 Q Have you ever discussed anything bearing on

1 the documents that were contained in Mr. Foster's
2 office with the First Lady?

3 A No.

4 Q Who is Susan Thomases?

5 A Susan Thomases is a friend of the Clintons
6 who is an attorney in New York City.

7 Q Did she work on the 1992 campaign?

8 A Yes, at various times. I'm not -- I'm not
9 sure she worked full-time. She came down and did
10 scheduling toward the end, but I'm not quite sure
11 when she came in.

12 Q Do you know whether Mrs. Thomases has ever
13 provided any legal services to the Clintons?

14 A Well, yeah.

15 MR. NUSSBAUM: Just answer the question yes
16 or no, Bruce.

17 THE WITNESS: I'm trying to do that.

18 MR. NUSSBAUM: Don't go beyond that.

19 THE WITNESS: Legal services. Yes.

20 BY MR. GIUFFRA:

21 Q What is your understanding of the nature of
22 the legal services that Ms. Thomases has provided to

1 the Clintons?

2 MR. NUSSBAUM: At this point.

3 THE WITNESS: I'll be right back.

4 MR. GIUFFRA: Off the record.

5 (Discussion off the record.)

6 MR. NUSSBAUM: Why don't you read the
7 question back.

8 (The reporter read the record as requested.)

9 THE WITNESS: The reason I hesitated on
10 your question earlier about whether or not she
11 provided it is because I'm not sure if this is
12 necessarily legal services, but shortly after -- this
13 is during the campaign, he was not the President
14 now. So if your question is whether I'm aware of any
15 legal services she's provided to the President, the
16 answer is no, but during the campaign, shortly after
17 the Gerth story and after we gathered the initial
18 records with respect to Whitewater, I believe Susan
19 and maybe one other lawyer sat down with Jeff Gerth
20 and tried to walk him through the Clintons'
21 investment in a meeting in New York some time, like I
22 say, in probably March or early April of 1992.

1 BY MR. GIUFFRA:

2 Q Do you recall the name of the other lawyer?

3 A Yes.

4 Q Who was that?

5 A Loretta Lynch, I believe.

6 Q And let me just ask another question. With
7 regard to this process of gathering records related
8 to the Whitewater investment, what do you know about
9 that process?

10 MR. NUSSBAUM: You mean who did it or
11 when --

12 BY MR. GIUFFRA:

13 Q Did there come a time during the 1992
14 Presidential campaign in which an attempt was made to
15 gather records related to the President and
16 Mrs. Clinton's investment in Whitewater Development
17 Corporation?

18 A Yes.

19 Q Do you know who gathered those records?

20 A No.

21 MR. NUSSBAUM: Then I don't have to
22 object. For the record, I would have.

1 BY MR. GIUFFRA:

2 Q So it's your testimony you don't know
3 whether Mr. Foster played any role in gathering those
4 records?

5 A No, I don't know.

6 Q Do you have any knowledge as to whether
7 anyone from the Rose Law Firm played a role in
8 gathering those records?

9 A Well, I think some of the documents were at
10 the Rose Law Firm, so I assume they did, but I don't
11 know who.

12 Q What's the basis for your understanding
13 that some of the records were at the Rose Law Firm?

14 A I don't know. I mean, I just -- I think --
15 I don't know how I know that.

16 Q Did you have any conversations with
17 Mrs. Clinton in connection with the process by which
18 records were gathered, Whitewater records were
19 gathered, during the 1992 campaign?

20 A No.

21 Q Do you recall any of the other locations
22 from which records were gathered with regard to

1 Whitewater Development Corporation during the 1992
2 campaign?

3 A No. Well, some of the records were the
4 Clintons' records, so I assume they were gathered
5 from the Clintons. I don't know where physically the
6 Clintons had their records, but some of the records
7 we gathered. Canceled checks, tax records and
8 others.

9 Q Did there come a time during the 1992
10 campaign when these records were eventually gathered?

11 A Sometime after the Jeff Gerth story, yes.

12 Q Do you recall the approximate volume of
13 records that were gathered?

14 A I don't know.

15 MR. NUSSBAUM: I'm just going to object
16 now. Maybe I'm dense, but I really -- or you can
17 instruct me formally, but I don't understand how this
18 line of questioning has anything or could have
19 anything to do with the removal, alleged removal of
20 documents from Mr. Foster's office, about which he's
21 thus far told you he knows nothing.

22 MR. GIUFFRA: Counsel, I think it's

1 directly relevant. If you want to instruct the
2 witness not to answer the question, you're free to do
3 so.

4 MR. NUSSBAUM: Can you tell me how it's
5 relevant or you don't want to do that?

6 MR. GIUFFRA: I'm more than happy to tell
7 you.

8 MR. NUSSBAUM: That's why I was asking.

9 MR. GIUFFRA: Looking to see what documents
10 were contained in Mr. Foster's office, if there were
11 documents gathered during the 1992 campaign with
12 regard to Whitewater, I would like to ask this
13 witness about that process and the volume of
14 documents that were gathered.

15 MR. NUSSBAUM: How would that -- let's
16 assume that he knew that and knew there were
17 documents gathered. How would that prove that those
18 documents were in Mr. Foster's office? If you asked
19 him the question whether he knows, and I think you
20 have asked him whether he knows what documents were
21 in Mr. Foster's office, I think maybe you will come
22 at this from another direction to get your answer.

1 If he doesn't know what was in Mr. Foster's office,
2 then it's irrelevant to ask him what may have been
3 gathered in another place. Moreover, even if they
4 were gathered in another place, how does that
5 demonstrate they were in Mr. Foster's office?

6 MR. GIUFFRA: I disagree. If you want to
7 instruct him not to answer the question or if he
8 doesn't want to answer the question, that's fine.

9 MR. NUSSBAUM: I would ask you to ask him
10 first whether he knows what documents were in
11 Mr. Foster's office at the time of his death. It
12 seems to me that's a far more reasonable way to get
13 at this rather than to start asking him a bunch of
14 questions about the 1992 campaign, Jeff Gerth's
15 article and documents that were gathered.

16 MR. GIUFFRA: Well, I'm the person asking
17 the questions. I have propounded my question. If
18 you want to instruct your witness not to answer the
19 question, that's fine. I don't want to get into a
20 long colloquy about this.

21 MR. NUSSBAUM: You won't ask the question
22 the other way?

1 MR. GIUFFRA: I'm more than happy -- I
2 think I've already asked the first question.

3 MR. NUSSBAUM: The first question being do
4 you know what documents were in Mr. Foster's office?

5 BY MR. GIUFFRA:

6 Q I believe you've answered that you don't
7 know what documents were in Mr. Foster's office;
8 is that correct?

9 A Do I know now or did I know then?

10 Q Did you know as of the time of Mr. Foster's
11 death what documents were in his office?

12 A No.

13 Q Fine?

14 MR. NUSSBAUM: Isn't that what this -- I
15 thought that's what this was about, this whole
16 proceeding. That's the seminal question. You just
17 asked him and you got the answer. What difference
18 does it make what documents other people gathered at
19 another time? I don't even know the answer to these
20 questions. I don't know whether I even care what the
21 answer is, but what difference does it make is my
22 question to you.

1 MR. GIUFFRA: I believe it's relevant. If
2 you wish to instruct the witness not to answer the
3 question, you're free to do so.

4 MR. NUSSBAUM: What is the specific
5 question that you want me to instruct him not to
6 answer?

7 MR. GIUFFRA: What was the last question?
8 (The reporter read the record as requested.)

9 BY MR. GIUFFRA:

10 Q I don't know whether he -- -- was that your
11 answer?

12 A Yes.

13 Q I didn't hear it.

14 A We were speaking over each other.

15 Q So you don't know the approximate volume of
16 documents?

17 A No.

18 Q Can you estimate as to whether it was one
19 file drawer, two file drawers, three, four file
20 drawers?

21 A No.

22 Q So you have absolutely no idea as to the

1 amount of documents that were gathered during the
2 course of the campaign with regard to Whitewater?

3 A No. I mean, I believe it was more than --
4 I don't know about file drawers. It was more than
5 one file folder, but whether it was four or six or
6 eight, I have no idea.

7 Q When you say -- do you mean one file drawer
8 or one file folder?

9 A No, I'm talking about more than one box,
10 file box.

11 Q Mr. Lindsey, do you know whether copies
12 were made of those Whitewater records?

13 A Ever?

14 Q During the 1992 campaign.

15 A No, I don't know.

16 Q Do you know whether copies of those
17 documents were ever made, the ones that were gathered
18 during the campaign?

19 A My understanding was that the documents
20 that were gathered during the campaign ultimately
21 went to Patton, McCarthy for the purposes of their
22 reconstruction.

1 Q That's the accounting firm; right?

2 A Right. Denver, Colorado. And that they
3 had been subpoenaed by the Independent counsel and,
4 therefore, I believe, I would assume -- I'm not to
5 assume.

6 MR. NUSSBAUM: Don't assume.

7 THE WITNESS: I assume copies were made at
8 the time they were shipped to the Independent
9 Counsel.

10 BY MR. GIUFFRA:

11 Q And it would be your testimony that these
12 documents were also provided to Ms. Thomases?

13 A I don't know that they were provided to
14 her, no. No, that would not be my testimony.

15 Q Did she ever see these documents?

16 A I don't know the answer to that. I assume
17 she had to in order to have her conversation with
18 Jeff Gerth. I know she spoke with Jeff Gerth. I
19 assume she reviewed documents beforehand, but I don't
20 know that as a fact.

21 Q Your understanding is that she did review
22 documents with Jeff Gerth, though?

1 MR. NUSSBAUM: Objection; I don't think
2 that's what he said.

3 THE WITNESS: I know she met with Jeff
4 Gerth to talk about it. I don't know whether she
5 showed him documents or not, no.

6 BY MR. GIUFFRA:

7 Q Were these Whitewater documents maintained
8 in a file cabinet in the Little Rock campaign
9 headquarters?

10 A I have no idea.

11 Q Do you have any knowledge as to what
12 happened to these documents at the conclusion of the
13 campaign?

14 A Well, I think before the conclusion of the
15 campaign they were sent to Colorado.

16 Q Do you know whether copies were maintained?

17 A No.

18 Q After the documents were sent to Colorado
19 to Patton, McCarthy?

20 A To Jim Lyons who made them available to
21 Patton, McCarthy or to Patton, McCarthy, yes.

22 Q Do you know what happened, whether

1 additional copies were made of those documents?

2 A No.

3 Q So you don't know whether Mr. Lyons might
4 have sent such documents to Mr. Foster?

5 A No.

6 Q And you don't know whether either Clinton
7 would have given such documents or any of such
8 documents to Mr. Foster?

9 A No.

10 Q Have you ever discussed with anyone --
11 strike that.

12 Following Mr. Foster's death, did you
13 subsequently learn that there were documents relating
14 to Whitewater Development Corporation in his office?

15 A Yes.

16 Q How did you learn about the fact that there
17 were documents relating to Whitewater Development
18 Corporation in Mr. Foster's office?

19 A I think we told the press.

20 Q Within the White House, who told you that
21 there were documents related to Whitewater
22 Development Corporation in Mr. Foster's office?

70

1 A I don't know the answer to that.

2 Q You just don't recall?

3 A No, I mean it came up again in November or
4 so that there was a story perhaps in the Washington
5 Times that one of the Park Police, I believe, said
6 that he remembered the word "Whitewater" being
7 mentioned during the review of the documents. I
8 believe someone asked a question -- I don't even know
9 who our press spokesman was at the time -- and we --
10 that person said that yes, there was -- one of the
11 documents that was transferred to the Clintons'
12 personal counsel related to Whitewater, but again, I
13 don't remember whether I -- I don't remember who told
14 me that other than it was part of that discussion
15 after the press inquiry and the story had appeared.

16 Q Have you ever discussed with the President
17 why Mr. Foster had documents bearing on Whitewater
18 Development Corporation in his White House office?

19 A No.

20 Q Have you ever discussed with the First Lady
21 why Mr. Foster -- strike that.

22 Have you ever discussed with the First Lady

1 the fact that Mr. Foster had documents relating to
2 Whitewater Development Corporation in his office?

3 A No.

4 Q Have you ever discussed with Mr. Lyons the
5 fact that Mr. Foster had documents relating to
6 Whitewater Development Corporation in his office,
7 other than the conversation you've already testified
8 to?

9 A No.

10 Q Have you ever discussed with anyone why
11 Mr. Foster had documents relating to Whitewater
12 Development Corporation in his office?

13 A Yes.

14 Q Who have you discussed that subject with?

15 A Oh, other members of the White House
16 counsel's staff.

17 Q Do you recall approximately when you had
18 those discussions with other members of the White
19 House counsel's staff with regard to why Mr. Foster
20 had documents relating to Whitewater Development
21 Corporation in his office?

22 A Well, you know, we've had discussions that

1 the --

2 MR. NUSSBAUM: Bruce, why don't you just
3 answer his question about describing the
4 discussions.

5 THE WITNESS: What was the question?

6 (The reporter read the record as requested.)

7 THE WITNESS: Well, I've had discussions in
8 the last month. We probably had discussions around
9 the time that the press made inquiries about the
10 documents.

11 BY MR. GIUFFRA:

12 Q Those would have been discussions with the
13 White House counsel's office?

14 A Probably.

15 Q Do you recall who those discussions were
16 with?

17 A No.

18 Q Do you recall anything about the substance
19 of those discussions with regard to why there were
20 documents related to Whitewater Development
21 Corporation in Mr. Foster's office?

22 MR. NUSSBAUM: To the extent that those

1 discussions were discussions between members of the
2 White House -- White House counsel's staff in the
3 context of responding to Senate and Independent
4 Counsel inquiries, not directly in the aftermath of
5 the death of Mr. Foster, which I understand has been
6 waived, I do not understand that privilege has been
7 waived going that far out. My understanding from
8 Jane Sherbourne -- and we can ask her, you can ask
9 her -- is that discussions among members of the White
10 House counsel's office staff about these matters that
11 has taken place in discussing the response that the
12 White House should have to various inquiries remains
13 privileged until she tells us otherwise. I don't
14 think that's his prerogative at this point to answer
15 that question.

16 MR. GIUFFRA: Counsel, I think you may be
17 jumping. I believe Mr. Lindsey, and the record will
18 reflect this, was discussing conversations that he
19 had had with members of the White House counsel's
20 staff in connection with press inquiries. Last I
21 knew, I don't think that responding to press
22 inquiries is something that is covered by any kind of

1 a privilege.

2 MR. NUSSBAUM: Well, I think a
3 discussion -- unless -- the response to the press
4 inquiry itself, to the extent someone talks to the
5 press, is not privileged. Discussions among members
6 of the White House counsel's office about how to
7 respond might be privileged. I don't know when this
8 press inquiry is.

9 You also, as part of that question, or part
10 of his answer, talked about a point at another time
11 somewhat later, so I'm not exactly sure the time
12 frame in which you're asking him this.

13 As I understand it, unless it has to do
14 with discussions that they all had surrounding -- in
15 the days surrounding his death and the manner in
16 which to handle this, be it sealing the office or
17 anything else, they have not waived the privilege.

18 MR. GIUFFRA: Why don't you read back the
19 pending question and then if counsel wishes to
20 instruct the witness not to answer the question, we
21 can decide how to proceed at that point.

22 (The reporter read the record as requested.)

1 BY MR. GIUFFRA:

2 Q Am I correct that it's your testimony that
3 you were party to discussions -- strike that.

4 You became a member of the White House
5 counsel's staff in --

6 A Fall of '94.

7 Q -- fall of '94. Do you recall any
8 discussions that you had with regard to why documents
9 related to Whitewater Development Corporation were in
10 Mr. Foster's office prior to the fall of 1994?

11 A Probably, yes.

12 Q And would those discussions have been in
13 the context of responding to press inquiries?

14 A Yes.

15 Q Those press inquiries would have occurred
16 in approximately late 1993?

17 A I believe so.

18 Q And you had those discussions with members
19 of the White House counsel's staff?

20 A Yes.

21 Q And you don't recall who you spoke to on
22 the White House counsel's staff?

1 A Specifically, no.

2 Q Do you have a general recollection as to
3 who you spoke to? Mr. Nussbaum?

4 A I would assume that Bernie would have been
5 involved, but I don't remember. I don't remember a
6 conversation where I can tell you who was sitting
7 across from me or standing across from me.

8 Q What did you discuss with these unspecified
9 members of the White House counsel's staff with
10 regard to why documents related to Whitewater
11 Development Corporation were in Mr. Foster's office?

12 MR. NUSSBAUM: At this point I have to
13 object and state that I don't think that Mr. Lindsey
14 is empowered to answer that question without a waiver
15 of whatever privileges, if any, the White House
16 counsel's office thinks are applicable. If they say
17 there are none, he'd be happy to answer.

18 BY MR. GIUFFRA:

19 Q You were not a member of the White House
20 counsel's office at that time; correct?

21 A No.

22 MR. KRAVITZ: Why doesn't somebody call

1 Jane Sherbourne and see if they have a problem. I
2 think that may be faster than arguing about it.
3 MR. NUSSBAUM: Go ahead and call.
4 MR. GIUFFRA: I think it's your call.
5 MR. NUSSBAUM: I'd be happy to have you
6 call.
7 MR. GIUFFRA: Why don't you just call.
8 MR. KRAVITZ: Why don't you do a conference
9 call.
10 MR. GIUFFRA: Call Jane and get an answer.
11 Off the record.
12 (Discussion off the record.)
13 MR. NUSSBAUM: So I understand it, the
14 question was did you have the discussion about why
15 Mr. Foster had Whitewater files in his office, right,
16 and what the substance of those discussions were?
17 MR. GIUFFRA: I may ask other questions,
18 but yes.
19 (The reporter read the record as requested.)
20 THE WITNESS: If I remember right, at the
21 time there were demands, for lack of a better word,
22 from the press that we turn over the file. We had

1 discussions about whether we should or shouldn't. I
2 was never told, I don't believe -- I was never told
3 what was in the file, but I was told that the
4 documents were consistent with the type of documents
5 Vince would have been using to prepare the Clintons'
6 tax returns and their financial disclosure forms.
7 BY MR. GIUFFRA:
8 Q Did anyone indicate to you why Mr. Foster
9 would have used these documents to prepare the
10 President and First Lady's tax returns or financial
11 disclosure forms?
12 A Well, since I didn't know what the
13 documents were, no -- I mean, I don't know.
14 Q Were you ever shown the documents?
15 A No, no.
16 Q Did anyone indicate to you why there was --
17 strike that.
18 At that point, were the documents turned
19 over to the press?
20 A No.
21 Q Why were the documents not turned over to
22 the press?

1 A Because we turned them over to the
2 Independent Counsel and we took the position that we
3 were not turning over to the press documents we
4 turned over to the Independent Counsel. We were
5 cooperating with a duly authorized investigation.

6 MR. NUSSBAUM: Let him turn them over to
7 the press.

8 BY MR. GIUFFRA:

9 Q Were any concerns raised about anything
10 contained in those documents?

11 A No. "Concern"? What do you mean by
12 "concern"?

13 Q Was there any discussion that if any of
14 these documents were provided to the press, it might
15 be -- it might cause any kind of adverse press
16 attention?

17 A Well, at that point the press -- I don't
18 know if they did or didn't. We did not believe the
19 press had the longer version of the Lyons report, so
20 that would have been new information to them. You
21 know, you'll have to decide whether that would create
22 a stir among the press, but it turned out later at

1 least one reporter, through other sources, probably
2 Independent Counsel, who knows, reported on the
3 longer version of the Lyons report, but at that time
4 I don't think anyone had reported on it.

5 Q Have you ever discussed with anyone
6 anything bearing on the fact that Mr. Foster's files
7 contained handwritten notes relating to Whitewater
8 Development Corporation?

9 A No.

10 Q Have you ever discussed with anyone whether
11 Mr. Foster was involved in trying to ascertain the
12 appropriate tax treatment of the Clintons' investment
13 in Whitewater Development Corporation?

14 THE WITNESS: Read that back to me,
15 please.

16 (The reporter read the record as requested.)

17 THE WITNESS: I think the answer to the
18 question as posed is no. Now you can try to figure
19 it out.

20 BY MR. GIUFFRA:

21 Q This is what makes depositions long.

22 A I came to learn later that there were --

1 there was a question at some point about what they
2 should reflect as the value of Whitewater on the tax
3 return, since they had a loss, and that a decision
4 had been made to take the most conservative approach
5 and report the thousand dollars they received from
6 McDougal.

7 Now, I don't know whether Vince -- I mean,
8 that was, I think, the decision. I don't think he
9 was trying to ascertain what the right value --
10 proper value was. I think they probably were
11 entitled -- personally, I'm not a tax lawyer -- to
12 take a loss, but a decision was made in order to take
13 the most conservative approach would be to report the
14 thousand dollars.

15 Q As a gain on their income tax?

16 A As a gain on their income tax.

17 Q Rather than as a loss?

18 A Right, instead of reporting whatever the
19 actual loss was.

20 Q Who was it that advised you that Mr. Foster
21 was involved in this process of trying to ascertain
22 the tax treatment of the Clintons' investment on

1 their income tax returns?

2 A Well, I don't know if anybody advised me
3 that Mr. Foster was involved in that. At some point
4 in all of this, the press raised -- the question came
5 up, you know, if you claim you have a loss, you know,
6 why did you treat it as a gain, and the response was,
7 I think, that that was the most conservative way and
8 that was the way the Clintons decided to do it.

9 Now, again, I think in the course of that I
10 knew that Vince was involved in those discussions,
11 but again, I don't remember -- I don't know anything
12 specifically about his involvement, but that that was
13 part of the decision and that he was involved in
14 those discussions.

15 Q Do you recall the approximate time at which
16 these discussions occurred?

17 A What discussions?

18 Q The discussions with regard to the tax
19 treatment that should be given to the President and
20 Mrs. Clinton's investment in Whitewater Development
21 Corporation.

22 A The discussions I had occurred a year or so

1 later. I had no discussions contemporaneous with the
2 decisions.

3 Q You played no role in those decisions?

4 A And played no role in the decisions.

5 Q It's your understanding that those
6 discussions would have occurred in the spring of
7 1993?

8 A I would assume, since they filed their
9 return on time that yes.

10 Q Do you have any understanding as to who
11 might have played a role in those discussions with
12 regard to the appropriate tax treatment of the
13 Clintons' investment in Whitewater Development
14 Corporation?

15 A No, no, not specifically.

16 Q Generally?

17 A Well, I think the Clintons would have been
18 involved. I mean, you know -- I assume -- I think --
19 I believe Vince was involved. You know, their
20 accountant may have been involved. No, I'm guessing.

21 Q What's the basis for your belief that
22 Mr. Foster was involved in this decision?

1 A Just again at some point when we were --
2 when this came up about the treatment, I had the
3 impression that Vince was involved in it. I mean,
4 again, I don't know why, I don't know who told me or
5 how they told me or how I had that belief, but at
6 some point in there I came to believe that he was
7 involved.

8 Q And this would be after the fact?

9 A Oh, yes.

10 Q Do you know who James Blair is?

11 A Yes.

12 Q Who is James Blair?

13 A He's an attorney in Fayetteville, Arkansas
14 and a friend of the Clintons.

15 Q And also the general counsel of Tyson Food?

16 A Currently, yes.

17 Q Was Mr. Blair a friend of Mr. Foster?

18 A I don't know that.

19 Q Do you know whether Mr. Blair knew
20 Mr. Foster?

21 A Arkansas is a small state. Yes, they knew
22 each other. Whether they would consider themselves

1 friends, I don't know.

2 Q Are you aware as to whether Mr. Blair had
3 any involvement with regard to the Clintons'
4 investment in Whitewater Development Corporation in
5 1992 or '93?

6 A Was I aware of it in 1992 or 1993?

7 Q No, were you aware of the fact whether he
8 had any involvement in 1992 and '93 with regard to
9 their investment.

10 A Yes, I'm aware of that now.

11 Q What is your understanding of Mr. Blair's
12 involvement in 1992 and '93 with regard to the
13 Clintons' investment in Whitewater Development
14 Corporation?

15 MR. NUSSBAUM: Let me just object on the
16 pertinency grounds. If we don't have a -- so we
17 don't have a long colloquy, if you could explain to
18 me why that question helps you get at your understand
19 information that you are seeking.

20 MR. GIUFFRA: Off the record.

21 (Discussion off the record.)

22 MR. GIUFFRA: Are you prepared to answer

86

1 the question?

2 MR. NUSSBAUM: I was hoping you were going
3 to answer mine first.

4 MR. GIUFFRA: I believe it's directly
5 relevant to the question of handling of the documents
6 in Mr. Foster's office.

7 MR. NUSSBAUM: I've asked you why it's
8 relevant and your answer to me is I believe it's
9 relevant.

10 MR. GIUFFRA: Exactly.

11 MR. NUSSBAUM: That's how I answer my
12 children when I don't want to discuss things with
13 them.

14 MR. GIUFFRA: The Committee has obtained
15 evidence indicating that some of the documents in
16 Mr. Foster's office reflect Mr. Blair's involvement
17 with regard to Whitewater in 1992 and '93.

18 MR. NUSSBAUM: Does that mean, then -- and
19 I don't know what documents were in Mr. Foster's
20 office, but is anything that is discussed in any one
21 of them fair game in this deposition? I mean, I
22 thought that the question was whether documents were

1 removed improperly. I suppose you are trying, as I
2 understood from talking to Mr. Chertoff on the phone,
3 that part of that might be certain tangential or
4 peripheral questions designed to find someone's
5 motives to remove documents.

6 MR. GIUFFRA: I think the record will
7 reflect that documents that I've asked -- questions
8 I've asked Mr. Lindsey have -- I haven't asked him
9 very many detailed questions about this. I'm just
10 trying to get a general understanding of what he,
11 someone who clearly was a close associate of the
12 President and First Lady, understood to be
13 Mr. Blair's role with regard to Whitewater, period.

14 MR. NUSSBAUM: That would be fine if you
15 had described the scope of this deposition to deal
16 with the Whitewater Development Corporation. You
17 have carved out a subset of that having to do with
18 the circumstances under which documents were removed
19 from Mr. Foster's office.

20 Mr. Lindsey has told you he doesn't know
21 what was in there or what, if anything, was removed.
22 He never discussed it with anyone, no one ever

1 discussed it with him and he never saw anything. It
2 seems to me he's answered just about every important
3 or relevant question you could ever ask him.

4 To ask him now about Blair seems to me to
5 be the topic of another deposition. We didn't
6 prepare for that in this deposition, and I think
7 there is a due process issue here when you define a
8 subscope, you know, and you say this deposition is
9 going to be about such-and-such and then you broaden
10 it on the theory that any document -- you can ask him
11 about any document. It seems to me that's unfair to
12 the witness.

13 MR. GIUFFRA: I have not shown the witness
14 a single document.

15 MR. NUSSBAUM: I know that, but you're now
16 asking him to describe Mr. Blair and Mr. Blair's
17 relationship. I don't even know the answers to these
18 questions. The fact is that's not what this is
19 supposed to be about.

20 MR. GIUFFRA: If you want to instruct the
21 witness not to answer the question, that's fine. If
22 you wish to speak with your client, that's fine. I

1 don't see a point in us getting into long colloquies
2 or in discussing how due process might be impinged by
3 this at this point. So it's your -- the ball is in
4 your court.

5 MR. NUSSBAUM: I am going to discuss it
6 with my client before we decide whether to -- whether
7 I decide to instruct him not to answer. You should
8 know, however, that as you start to go further and
9 further afield, particularly in light of the fact
10 that he has answered all of the direct questions that
11 it seems to me you could have had about what he
12 knows, we are going to get to that point. I mean, if
13 you want to have this, you know, get into a contest
14 of wills, I mean, we'll take you on. I really would
15 like to avoid that, but it just seems to me that, you
16 know, if you push it, we're going to push back.

17 MR. GIUFFRA: There's absolutely no
18 interest in engaging in a contest of wills, and I
19 have no interest in cluttering this record up with
20 these long colloquies of counsel. It's my
21 understanding that the Administration wants to be
22 forthcoming.

1 Let's go off the record. You can meet with
2 your client, discuss this and decide how you want to
3 respond.

4 (Discussion off the record.)

5 MR. NUSSBAUM: I have discussed this matter
6 with Mr. Lindsey. I'm going to let him answer this
7 question, although, again, there is no way that I can
8 see, nor have you explained or offered in response to
9 my question how this is in any way relevant. We'll
10 see where we go with all of this, but I will allow
11 him to answer this question.

12 THE WITNESS: The question was what was
13 Mr. Blair's involvement in 1992 and 1993 in
14 Whitewater?

15 MR. NUSSBAUM: What was your understanding
16 of his role.

17 THE WITNESS: I did not know at the time.
18 I have learned since that Jim Blair, I guess
19 negotiated would be the right word, the sale of the
20 Clintons' interest to Jim McDougal in December of
21 1992.

22 BY MR. GIUFFRA:

1 Q And it's your testimony you have no
2 knowledge as to whether Mr. Foster played any role in
3 connection with the sale of the Clintons' interest in
4 Whitewater to Mr. McDougal?

5 A No, I don't think that was my testimony.

6 Q Do you have any knowledge as to whether
7 Mr. Foster played any role in connection with the
8 sale of the Clintons' interest in December 1992 in
9 Whitewater Development Corporation to Jim McDougal?

10 A I did not know it at the time. I have
11 learned since that Vince prepared the documents.

12 Q What is the basis for your knowledge that
13 Mr. Foster prepared the documents in connection with
14 that sale?

15 A A memorandum to the file that Vince wrote.

16 Q And how did you come to review this
17 memorandum that Mr. Foster wrote?

18 A I never reviewed it. I've had it described
19 to me.

20 Q Who advised you of the existence of this
21 memorandum by Mr. Foster to the file with regard to
22 the sale of the Clintons' interest in Whitewater?

1 A Probably Jane Sherbourne.

2 Q Have you ever reviewed any of the documents
3 that were in Mr. Foster's office?

4 A No. Well, I have seen the Lyons report and
5 I have seen the long version of the Lyons report. I
6 have not seen either version that was in Vince's
7 office. So I have seen documents that were in
8 Vince's office, but I have not seen the copy of the
9 documents that were in his office. Is that clear?

10 Q Yes. And it's your testimony you never
11 discussed the Lyons report, either version, with
12 Mr. Foster?

13 A Correct.

14 Q The meeting that you testified to that
15 occurred prior to the review by Mr. Nussbaum of the
16 documents in Mr. Foster's office, did you discuss
17 anything having to do with the substance of that
18 meeting with anyone?

19 MR. NUSSBAUM: Other than his attorneys?

20 BY MR. GIUFFRA:

21 Q Other than your attorney.

22 A Not that I remember.

1 Q Have you ever discussed -- strike that.
2 Did there come a time when Mr. Nussbaum
3 reported back to you as to the process that he used
4 to review the documents in Mr. Foster's office?

5 A I don't think Bernie did, or at least I
6 don't recall Bernie doing that.

7 Q Do you recall someone reporting back to
8 you?

9 A Yes, yes, I think Bill Burton attended, and
10 I think what he reported back to me is that it had
11 gone well. I don't know if he went into any more
12 detail than that -- I don't remember any more detail
13 than that -- but he thought it had gone fine.

14 Q Do you recall whether that was the same day
15 as the review?

16 A My sense is it was, but I couldn't swear to
17 that, which I guess if I'm under oath I should. But
18 my sense was that after the meeting, Bill Burton came
19 back down and stopped by and said, you know,
20 everything went fine, they seemed okay with the way
21 it was handled. I don't know whether he -- again, I
22 don't remember any more detail than that.

1 Q Did you discuss what Mr. Burton had told
2 you with the President?

3 A No.

4 Q Did you discuss what Mr. Burton had told
5 you with anyone else?

6 A Not that I remember, other than my
7 attorneys. Well, I had discussions with, you know,
8 the investigators from the Office of Independent
9 Counsel.

10 Q Other than investigators or your attorney?

11 A No, the privilege issues that were
12 discussed at the meeting, do you recall whether they
13 related to attorney-client privilege issues as to --
14 strike that.

15 Q It's your testimony that there was no
16 discussion at this meeting of the fact that
17 Mr. Foster's office contained personal documents of
18 the Clintons'?

19 A I don't remember -- I don't remember that
20 there was any discussion of that, no.

21 Q Do you think that's something you would
22 remember?

1 A No.

2 Q Are you someone that has a good memory?

3 A You know, I mean, I have hundreds of
4 conversations every day, so to be able to reflect the
5 substance of a particular conversation -- I think I
6 have a good memory in that I remember that I was in
7 that meeting, but much beyond that, I don't remember
8 the details.

9 Q Do you recall any discussion at any time of
10 the Department of Justice criticizing the White House
11 for not allowing Department of Justice lawyers to
12 review the documents in Mr. Foster's office?

13 A I remember at some point there was a
14 controversy between the Department of Justice and the
15 Park Police that we were in the middle of as to who
16 should conduct the investigation, but again, I don't
17 remember -- you know, I don't remember much more
18 about it other than I know that I think the
19 Department of Justice thought this would be an FBI
20 investigation and the Park Police believed that since
21 he was found where he was, that it was a Park Police
22 matter.

1 Q What was the basis for your understanding
2 of this conflict between the Park Police and the
3 Department of Justice?

4 A Probably Bernie.

5 Q Did you ever discuss anything having to do
6 with the handling of the papers in Mr. Foster's
7 office with David Gergen?

8 A Not specifically.

9 Q Do you have a general sense that you might
10 have spoken with David Gergen about this matter?

11 A David Gergen and I had a disagreement over
12 whether we should release all files -- this was,
13 again, in December and January -- whether or not the
14 way to get Whitewater behind us was just to throw all
15 the Whitewater files into the public domain.

16 Q Including those that might be protected by
17 an attorney-client privilege?

18 A Well, I don't know if we got into that
19 level of detail, but it was just, you know, put it
20 out there, let them spend -- his view was let them
21 spend a week searching through them, they will find
22 there's nothing there and we can go on. In

1 retrospect, he may have been right, but the decision
2 was not to do that, but to turn them over to the
3 Independent Counsel and not make them public.

4 Again, I don't remember any specific
5 discussion about any specific files. It was more of
6 a general discussion about how we should respond to
7 the press inquiry for give us everything.

8 Q Was it your understanding that some of the
9 documents you were talking about turning over to the
10 press were documents that were maintained in
11 Mr. Foster's office at the time of his death?

12 A I don't think so. Unless this discussion
13 occurred after we identified that there was a file,
14 and at that point I would have guessed that it would
15 have included it, but again, it was not the focus or
16 the basis of it. I would have extrapolated that out
17 of the fact if we were going to turn everything over
18 and I was aware there was a Whitewater document in
19 Foster's file, that would be part of it, but again,
20 it was not the focus of the discussion.

21 Q Have you discussed any of the papers that
22 were contained in Mr. Foster's office with David

1 Kendall or anybody from Williams & Connolly?

2 MR. NUSSBAUM: Let me just object there. I
3 mean, other than wondering in my own mind why on
4 earth you wanted to know that, the fact is that
5 Mr. Kendall is an attorney who represents the
6 President of the United States. Mr. Lindsey also has
7 attorney-client relationship with the President of
8 the United States. It seems to me that it's not
9 Mr. Lindsey's -- Mr. Lindsey is not empowered to
10 answer your question.

11 MR. GIUFFRA: First, the fact of a
12 discussion is not a disclosure of the substance of
13 the communication, so he can answer that question.

14 MR. NUSSBAUM: Well, the fact of a
15 discussion about a certain thing reveals to the
16 reader what attorneys for the President are talking
17 about. The way in which your -- the fact that
18 there's a follow-up question doesn't mean that
19 there's --

20 MR. GIUFFRA: That's a view of the
21 attorney-client privilege that I am unfamiliar with.

22 (Witness conferred with counsel.)

1 MR. NUSSBAUM: To the extent that
2 discussions -- that the answer calls for Mr. Lindsey
3 to reveal anything about the substance of a
4 discussion involving an attorney for the President of
5 the United States, in fact, two attorneys for the
6 President of the United States, I think that's
7 privileged, and unless the -- I guess it's a
8 privilege for the President to waive. I don't think
9 that Mr. Lindsey can answer that question. And so --

10 MR. GIUFFRA: So you're instructing the
11 witness not to answer the question of whether he has
12 ever had conversations with Mr. Kendall about any of
13 the documents in Mr. Foster's office, just the fact
14 of the conversation?

15 MR. NUSSBAUM: The fact of a conversation?
16 Yeah. I don't think that you have a right at this
17 point to know what lawyers for the President are
18 talking about, unless the person holding that
19 privilege wants you to know.

20 MR. GIUFFRA: So you're instructing him not
21 to answer the question?

22 MR. NUSSBAUM: Correct.

100

1 MR. GIUFFRA: With regard to the fact of
2 the communication?

3 MR. NUSSBAUM: Correct. I can't for the
4 life of me imagine why you think you're entitled to
5 know anything of any discussion that Mr. Kendall is a
6 party to.

7 MR. GIUFFRA: Including the fact of the
8 communication?

9 MR. NUSSBAUM: Right. I frankly think it's
10 an ill-mannered question for you to be asking what
11 the President and his lawyer are discussing, putting
12 aside what relationship on earth it could have with
13 Mr. Foster.

14 BY MR. GIUFFRA:

15 Q Mr. Lindsey, you are deputy White House
16 counsel; correct?

17 A Yes.

18 Q Are you an attorney to the President and
19 Mrs. Clinton in their personal capacities?

20 A I have served in that role, yes.

21 Q In your capacity as deputy White House
22 counsel?

1 A Well, no, but Whitewater is not a purely
2 personal matter, and it impacts on the President --
3 if it was a purely -- it impacts on the Presidency
4 and the President as President, as well as an
5 individual. And, therefore, we have always taken the
6 position, and we continue to take the position, that
7 attorneys dealing with the White House in the White
8 House counsel's office in their dealings with
9 Mr. Kendall, that those conversations are protected
10 by privilege as well.

11 Q What is the nature of the privilege that
12 they are protected by?

13 A Attorney-client.

14 Q And right now you're asserting
15 attorney-client privilege with regard to the
16 disclosure of the fact of this communication?

17 MR. NUSSBAUM: Yes.

18 BY MR. GIUFFRA:

19 Q Have you ever discussed the papers in
20 Mr. Foster's office, any of the papers in
21 Mr. Foster's office, with Susan Thomases?

22 A No.

1 Q Have you ever discussed any of the papers
2 in Mr. Foster's office with Maggie Williams?

3 A No.

4 Q And other than conversations you've already
5 identified for the record, have you ever discussed
6 anything having to do with the papers in Mr. Foster's
7 office with Mr. Nussbaum?

8 MR. NUSSBAUM: You're calling upon him to
9 remember every point at which he's described a
10 discussion, if that's fair.

11 THE WITNESS: That's what I'm trying to
12 figure out. I think I have told you the substance of
13 most of the conversations I've had with Bernie with
14 respect to it. As to whether I've -- you know, every
15 instance that identify talked to him about it, I just
16 can't recall.

17 BY MR. GIUFFRA:

18 Q Do you have any knowledge as to what
19 happened to the documents in Mr. Foster's office upon
20 the completion of Mr. Nussbaum's review?

21 A Only what I read in the press.

22 Q So you have no knowledge with regard to

1 whether any of those documents were taken to the
2 residence?

3 A No, other than what I've read in the press.

4 Q And you have no knowledge as to whether the
5 President or Mrs. Clinton have ever reviewed the
6 documents that were contained in Mr. Foster's office?

7 A No knowledge.

8 Q Do you know a man named Tom Collier?

9 A Tom Collier?

10 Q Yes.

11 A Chief of staff at the Interior Department?

12 Q Yes.

13 A Yes.

14 Q Did you ever discuss with him the Park
15 Police's investigation into Mr. Foster's death?

16 A Not that I'm aware of.

17 Q Did you ever speak to anyone from the
18 Department of Justice with regard to the Park
19 Police's investigation into Mr. Foster's death?

20 A No. Well, FBI.

21 Q Other than the FBI.

22 A No.

1 Q Never spoke to Phil Heymann, for example?

2 A Not that I recall, no.

3 Q And are you aware of any -- strike that.

4 Did there come a time when you learned of
5 the discovery of a note, torn note, in Mr. Foster's
6 briefcase?

7 A Yes.

8 Q When was that?

9 A Whenever it was released, I think, maybe --
10 yeah, at least -- when it was found, shortly after it
11 was found.

12 Q Were you with the President when the note
13 was discovered?

14 A That would assume -- if the President was
15 not in the District of Columbia, the answer is
16 probably yes, but I don't know where I was and where
17 he was and when the note was discovered.

18 Q Would it refresh your recollection that the
19 President was in Chicago when the note was
20 discovered?

21 A Okay, then I was probably with him.

22 Q Do you typically travel with the President?

1 A Yes.
2 Q Do you recall how you learned of the
3 discovery of the note?
4 A No.
5 Q Do you recall if Mr. McLarty advised you of
6 the discovery of the note?
7 A I do not -- I do not believe that -- well,
8 I do not remember learning it on the road, so, you
9 know, I don't know whether I learned it when I got
10 back. If I was on the road -- which I'm having some
11 trouble working through -- but if I was on the road
12 with the President, I don't have any memory of
13 learning it on the road.
14 Q Do you recall the circumstances under which
15 you learned that the note was discovered?
16 A No.
17 Q Have you ever discussed with Mr. Nussbaum
18 the circumstances surrounding the discovery of the
19 note?
20 A He may have described to me the finding of
21 the note. I don't recall. I mean, I don't have
22 any -- I've read about it in the paper. He may have

1 told me about it as well. I just don't have any
2 memory of it.
3 Q You have no recollection of any
4 conversations in which he might have told you why he
5 did not see the note when he reviewed the documents
6 in Mr. Foster's office?
7 A No.
8 Q Did you ever discuss this note with Lisa
9 Foster?
10 A No, I don't think so.
11 Q Did you have any role in connection with
12 the question of the timing of the disclosure of the
13 note to the public?
14 A No.
15 Q Directing your attention to April 1994, do
16 you recall the First Lady's press conference with
17 regard to Whitewater that she conducted in April
18 1994?
19 A Yeah. I mean, I couldn't tell you it was
20 April 1994, but I remember she did a press
21 conference.
22 Q Did you have any role in connection with

1 preparing her for that press conference?

2 A No.

3 Q Would that have been something that she
4 would have done with her own staff?

5 A Again, I don't know who she would have done
6 it with. She didn't do it with me.

7 Q Did there come a time in late 1993 when you
8 became involved in a Whitewater damage control team?

9 A Yes. I'm not sure we called it that, but
10 yes.

11 Q Who was on that team?

12 MR. NUSSBAUM: Objection. Could you
13 explain to me how a Whitewater damage control team
14 created five months after the death of Mr. Foster
15 bears on the issues of whether documents were removed
16 from his office contemporaneous with his death?

17 MR. GIUFFRA: The actions that the White
18 House took with regard to responding to press
19 inquiries concerning handling of the papers in
20 Mr. Foster's office are clearly relevant to the
21 Senate's inquiry.

22 MR. NUSSBAUM: I couldn't hear the last

1 thing you said.

2 MR. GIUFFRA: Clearly relevant to the
3 Senate's inquiry.

4 MR. NUSSBAUM: The actions that the White
5 House took?

6 MR. GIUFFRA: In responding to press
7 inquiries related to the handling of papers in
8 Mr. Foster's office are clearly relevant to this
9 inquiry.

10 (Witness conferred with counsel.)

11 THE WITNESS: John Podesta, myself, Neil
12 Eggleston, I think Harold at some point, Lisa Caputo
13 maybe from the First Lady's office. There were
14 others, but I can't quite --

15 BY MR. GIUFFRA:

16 Q Mr. Cutler?

17 A I don't know if Lloyd was there or whether
18 Neil was the main person. I don't remember Lloyd
19 being at that many meetings, but Neil was at most of
20 them.

21 Q Did you play any role with regard to
22 responding to press inquiries concerning the papers

1 in Mr. Foster's office?

2 A I don't remember. I mean, at some point we
3 identified that there was a file in the office and
4 that the file had been turned over to the Clintons'
5 private counsel. I think that statement was issued
6 by Bernie. I think I was probably involved in
7 discussions leading up to the issuance of that
8 statement, but beyond that I don't know whether I got
9 additional questions after that or not.

10 Q Do you recall anything about those
11 discussions with regard to the issuance of the
12 statement that Mr. Nussbaum issued?

13 A I mean, we just issued a statement. I
14 don't --

15 Q Do you recall why he issued the statement?

16 A Yeah, because the press was asking what
17 happened to the file.

18 Q And do you recall Mr. Nussbaum advising you
19 as to what happened to the files at that time?

20 A Again, I don't know if I read it in the
21 statement or if he told me, but what we said was that
22 the file had been turned over -- that the files, all

1 the files in Vince's office, had been broken down
2 into three groups.

3 Q What were the three groups?

4 A Those that were personal to Vince Foster,
5 which were given to Jim Hamilton; those that were
6 personal to the Clintons, which were given to
7 Williams & Connolly; and those that were White House
8 counsel files, which were redistributed throughout
9 the White House to other counsel in the White House
10 counsel's office. Now, I thought we did that by a
11 statement from Bernie. And again, I think follow-up
12 questions were probably handled by whoever the press
13 secretary was then. Maybe that was Mark. If not
14 him -- I think that was after George left. Again, I
15 was aware of all that, was involved in a general way
16 in all of that, but I don't -- beyond that, I don't
17 have any memory, I mean, I don't have any specific
18 memory of conversations.

19 Q Do you recall a time when Maggie Williams
20 made public statements with regard to the handling of
21 the papers in Mr. Foster's office?

22 A No.

1 Q Do you recall any -- do you recall a time
2 when there was discussion as to whether the First
3 Lady had made accurate statements at her press
4 conference with regard to the handling of the papers
5 in Mr. Foster's office?

6 A Vaguely. I mean, there was an issue that
7 came up that the initial statement did not reflect
8 that they sat in a closet in the White House for two
9 or three days.

10 Q Correct.

11 A And that that issue came up. I don't quite
12 remember whether it came up from the First Lady's
13 press conference or not, but if that's what you're
14 referring to, yes, I know that that became an issue
15 at some point.

16 Q Do you recall being involved in trying to
17 respond to that issue with regard to the chain of
18 custody of those documents?

19 A Not specifically, no.

20 Q You don't recall ever speaking to Carolyn
21 Huber about the documents being in the closet?

22 A No, no.

1 Q Ms. Coyle is your -- was your secretary as
2 of July 20, 1993?

3 A Yes, assistant. She wouldn't want me to
4 say this. She was -- secretary to the President was
5 her title. The President, frankly, doesn't need a
6 secretary, so she also served as my assistant. Her
7 official title was secretary to the President.

8 Q If the President were seeking to contact
9 you, would the message say "call the President" or
10 "call Ms. Coyle"?

11 A Oh, no, it would say "call the President."

12 Q That's your pager message?

13 A Yeah, it would be "call the President" or
14 "call Nancy" -- it might say "call Nancy Hernreich"
15 or -- it would not say "call Deb Coyle."

16 Q Who is George Bruno?

17 A George Bruno was -- well, he was a
18 political activist in New Hampshire who we appointed
19 ambassador to some small central American country.
20 Bruno, maybe. What's the one that everybody likes to
21 go to? Not Costa Rica.

22 MR. NUSSBAUM: I'm not under oath,

1 Mr. Lindsey. I can't answer.

2 THE WITNESS: Anyway, we made him an
3 ambassador.

4 MR. KRAVITZ: Nice warm place.

5 THE WITNESS: That's right. With a nice
6 beach.

7 BY MR. GIUFFRA:

8 Q Joan Baggett?

9 A Was the political director in the White
10 House at the time. I say that. She may have been
11 the deputy political director. Ron may have still
12 been the political director.

13 Q Maria Rodham?

14 A Maria Rodham is the First Lady's brother's
15 wife who is a lawyer in Miami.

16 Q Debra Sale?

17 A Debra Sale is a good friend of mine from
18 New York. She's -- she was involved in the campaign.

19 Q Do you have any recollection of your
20 conversations -- strike that.

21 I would like to show you a document that
22 bears Bates number 0965. What is the reference --

1 what is that document?

2 A This is the way my call lists were done.
3 Deb would put who called and what the phone number
4 was and if they left a message and -- obviously the
5 one that's reflected on here she put Jim Lyons
6 through to me, so I actually spoke to him.

7 Q Do you recall anything about the substance
8 of that conversation?

9 A No.

10 Q Was Mr. Lyons someone you regularly spoke
11 to on the telephone?

12 A You asked that before.

13 Q I apologize.

14 A Basically he was a friend, friend of mine,
15 friend of Vince's.

16

17

18

19

20

21

22

1 MR. GIUFFRA: I can't think of any other
2 questions. Thank you for your cooperation.

3 MR. KRAVITZ: I have no questions.

4 MR. NUSSBAUM: I have no questions.

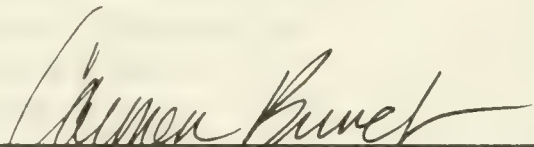
5 (Whereupon, at 6:47 p.m., the deposition
6 was concluded.)

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8 -----
9 BRUCE R. LINDSEY
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

116

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

**DEPOSITION OF CHERYL MILLS
IN RE: S. RES. 120**

WEDNESDAY, JULY 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of CHERYL MILLS, called for examination pursuant to notice of deposition, at 8:10 a.m. in Room 538 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
GLENN F. IVEY, Esq.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

ALLEN R. SNYDER, Esq.
Hogan & Hartson
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109
On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|----------------------|-------------|
| Cheryl Mills | |
| by Mr. Johnson | 3 |
| by Mr. Ivey | 93 |
| by Mr. Johnson | 111 |

1 PROCEEDINGS

2 Whereupon,

3 CHERYL MILLS

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q Good morning, Ms. Mills. We have met
9 briefly off the record. For the benefit of the
10 record, let me say again who I am. My name is
11 Everett Johnson. I am one of the attorneys
12 representing the majority members of the special
13 Senate committee investigating Whitewater and related
14 matters.15 What brings us here today is Senate
16 Resolution Number 120, which creates that committee
17 and authorizes the investigation. In particular, the
18 things we want to talk about today relate generally
19 to the investigation into the death of Vince Foster
20 on July 20, 1993, and specifically relate to the
21 handling of the documents in Mr. Foster's office at
22 the time of his death. So the questions that I ask

4

1 you and that Mr. Ivey may ask you will relate
2 generally to that topic.3 I know you are an attorney, so let me just
4 breeze through what would be a longer sort of
5 preliminary here. Let's try and recall, as we speak
6 to each other, not to speak simultaneously. That
7 helps the court reporter to do her job. If you need
8 to confer with your counsel at any time, feel free to
9 do so. I will rely on you to tell me if you don't
10 understand a question. Is that clear enough so far?

11 A Yes.

12 Q In preparing to testify here today, did you
13 meet with anyone?

14 A Yes.

15 Q Who did you meet with?

16 A My attorney.

17 Q Mr. Snyder?

18 A Yes.

19 Q Anyone else present in that meeting?

20 A No.

21 Q Did you meet with anyone from the White
22 House to discuss your testimony?

1 A No.

2 Q Can you give us a brief description of your
3 professional background.

4 A Graduated from Stanford Law School 1987,
5 worked at the law firm of Hogan & Hartson until
6 1992. In 1993, I went to the White House. I am now
7 an Associate Counsel to the President.

8 Q Who do you report to now?

9 A Abner Mikva.

10 Q You report directly to Judge Mikva?

11 A He is the supervisor of our office, yes.

12 Q You don't report through a deputy counsel,
13 Mr. Klein, or somebody like that?

14 A No.

15 Q What specific responsibilities do you have
16 as Associate Counsel to the President?

17 A To advise and counsel the staff on ethics
18 matters, issues related to executive clemency,
19 appropriations of funds, Hatch Act, presidential
20 succession. That's most of it.

21 Q When you say advising counsel on the staff
22 on ethics matters, which staff are you referring to?

1 A The White House.

2 Q Are you the attorney in the White House
3 counsel's office today with primary responsibility
4 for advising the staff on ethics matters?

5 A I share that responsibility with another
6 attorney.

7 Q Who do you share that responsibility with?

8 A Kathy Whalen.

9 Q W-h-a-l-e-n?

10 A Yes. Beth Nolan had that responsibility
11 until she just left last week.

12 Q How long have you had that responsibility?

13 A Well, Beth Nolan was the alternate
14 designated ethics official, and I worked with her on
15 ethics matters up until last week, and now she is
16 gone.

17 Q It has been part of your responsibility
18 ever since you joined the White House counsel's
19 office?

20 A Yes.

21 Q Tell us how you got the job in the White
22 House counsel's office.

1 A I worked on the transition planning
2 foundation.

3 Q What is the transition planning foundation?

4 A It is the precursor to the transition,
5 which occurs between the election of the President
6 and his inauguration. I worked down in Little Rock.

7 Q What was your role in the transition
8 planning foundation?

9 A In the actual -- during the period before
10 it actually became the transition, prior to his
11 election, I did legal and policy memoranda for the
12 board of directors for the transition planning.

13 Q Who did you report to, if anyone?

14 A I guess Jerry Stern.

15 Q Did you also work on the transition team
16 after the election?

17 A Yes.

18 Q What was your role?

19 A I was deputy general counsel.

20 Q And to whom did you report in that
21 capacity?

22 A There were four, Jack Quinn, Jim

1 Hamilton -- actually, those are the primary two that
2 I reported to.

3 Q I think the question that led us down this
4 path is how did you come to get your job in the White
5 House counsel's office?

6 A I was working there and then I was asked to
7 work in the counsel's office.

8 Q By whom?

9 A By Vince Foster and by the President.

10 Q When you say "by the President," you mean
11 that he personally spoke with you about it?

12 A Yes.

13 Q Did you know Mr. Foster well?

14 A At that time?

15 Q Yes, when you came on board.

16 A No.

17 Q What about by the time of Mr. Foster's
18 death some seven months later? Did you know him well
19 at that time?

20 A Yes.

21 Q During the day-to-day course of your
22 activities in the White House counsel's office, would

1 you frequently be in Mr. Foster's personal office?

2 A Yes. Not that this is a big deal, but
3 going back to the President, after I said yes to
4 Vince, then he talked to each person and said I'm
5 glad, I'm willing. I want to make sure it is clear
6 that's how it happened.

7 Q He didn't beg you to take the job?

8 A Right, right. That's what I wanted to make
9 clear.

10 Q How familiar were you in July of 1993 with
11 the contents of Mr. Foster's personal office?

12 A Not very familiar.

13 Q Did you know, for example, that he
14 maintained some personal files in there relating to
15 the First Family?

16 A I knew that there were tax forms, because
17 when Beth was dealing with the financial disclosure
18 report. I know that that was part of the forms that
19 he had. That's all I knew.

20 Q Did you have any information about whether
21 or not Mr. Foster maintained a file on Whitewater
22 Development company in his office?

10

1 A No.

2 Q Had you ever heard of Whitewater prior to
3 that time?

4 A No. I had heard of it during the campaign,
5 but I had not heard of it as an issue.

6 Q Ms. Mills, on the day Mr. Foster died, how
7 did you learn of his death?

8 A Dana Lawrence, who was a secretary in
9 presidential personnel, called me at my home. I had
10 just left the White House when she called me.

11 Q Can you place the time of day?

12 A I can't. It was in the evening.

13 Q Ms. Lawrence told you that Mr. Foster's
14 body had been found, I take it?

15 A No. She told me that Vince was dead.

16 Q Did you speak with anyone other than
17 Ms. Lawrence that evening about Mr. Foster's death?

18 A Yes.

19 Q Who did you speak with?

20 A Bruce Lindsey, John Emerson.

21 Q I missed the second name.

22 A John Emerson.

1 Q Who is Mr. Emerson?

2 A He at that time was deputy director of
3 presidential personnel and currently I believe is in
4 the political affairs office.

5 Q Anyone else?

6 A Kimberly Marteau, who is his spouse; Mark
7 Gearan; Dee Dee Myers; Bernie Nussbaum. Those are
8 all I recall.

9 Q Did you speak with these all telephonically
10 or did you go to the White House?

11 A I went to the White House.

12 Q Before going to the White House, who did
13 you speak with on the telephone, if anyone?

14 A Other than Dana Lawrence, no one.

15 Q After Ms. Lawrence informed you of
16 Mr. Foster's death, did you go directly to the White
17 House?

18 A I did.

19 Q About what time did you arrive at the White
20 House?

21 A I don't know what time it was. It was in
22 the evening.

1 Q Before midnight?

2 A Yes. Oh, yes, yes.

3 Q Did you go up to the White House counsel's
4 suite?

5 A At some time during that evening I did. I
6 don't recall whether or not when I came in that I
7 went directly there.

8 Q Whatever time you went up there, what did
9 you see when you got there?

10 A When I went up there, I actually went up
11 there with Bernie, and he was just walking around,
12 saying he couldn't believe it and that he had been
13 calling staff members so that they wouldn't learn
14 about it in the paper in the morning.

15 Q You went up with Mr. Nussbaum?

16 A I think I went up with him. I don't want
17 to say that I absolutely did. I saw him that night
18 because earlier in the evening we were talking to
19 Dee Dee Myers and Mark Gearan about the press
20 statement they were going to issue, and that was in
21 Mark Gearan's office. During that evening I had also
22 been in Bruce's office talking about it too. So I

1 don't know the order of these different events, but I
2 do recall being in all three of those places.

3 Q Whether or not you actually entered the
4 White House counsel's suite with Mr. Nussbaum, you
5 were in there and he was in there at the same time?

6 A Uh-huh, right.

7 Q When you went in, do you recall whether or
8 not the suite was already open?

9 A Yes.

10 Q Lights were on?

11 A Yes.

12 Q Anyone in the suite other than
13 Mr. Nussbaum?

14 A No.

15 Q How long did you remain in the suite?

16 A I can't recall. I think I talked to him
17 probably for about anywhere from 20 to 45 minutes.

18 Q Did you go into Mr. Foster's office?

19 A No.

20 Q Did Mr. Nussbaum?

21 A Not while I was there, no.

22 Q To your knowledge, did he go in there at

1 any other time?

2 A I learned from press accounts that he,
3 Patsy and Maggie had gone in the office looking for a
4 note.

5 Q Is the only way you know that, as you sit
6 here today, is based on press accounts?

7 A Well, I know that's how I found out about
8 it. I truthfully can't remember any discussions
9 independent of that. But I do remember that's how I
10 found out about it. So much of this now is just kind
11 of part of the lore, so I can't --

12 Q It is all kind of blurred together now?

13 A Yes.

14 Q Focusing on the 20 to 45 minutes you spent
15 in the White House counsel's suite, were you in
16 Mr. Nussbaum's personal office at that time?

17 A Yes.

18 Q Was anyone else in there?

19 A Not that I recall.

20 Q You never saw Ms. Williams or Ms. Thomasson
21 that evening in the White House counsel's office
22 suite?

1 A No.

2 Q Did you see them in the White House?

3 A I believe I may have seen Maggie on the
4 first floor in the space between the President's and
5 Vice President's office, but I can't even confidently
6 represent that. I just remember there were a number
7 of people in the hallway.

8 Q She was standing in the hallway?

9 A Yes. If she was, there were a number of
10 people milling in that hallway.

11 Q You didn't speak with Ms. Williams?

12 A I don't recall.

13 Q Does your mind's eye today recognize any of
14 the other faces milling around the hallway there?

15 A The people I identified earlier.

16 Q Mr. Lindsey, Mr. Emerson?

17 A Deb Coyle, who was Mr. Lindsey's assistant
18 at the time, was there. I don't really recall anyone
19 else.

20 Q What did you and Mr. Nussbaum talk about,
21 if anything, while you were in the White House
22 counsel's suite that evening?

16

1 A I just remember him saying that he was
2 calling staff members so they didn't find out, that
3 it was just so unbelievable, and I can remember
4 thinking it was just very unbelievable. I don't
5 really remember much more of the discussion.

6 Q Did you observe Mr. Nussbaum placing any
7 telephone calls?

8 A Yes. Actually, I can remember he was on
9 the phone, and I just can't remember to whom, but it
10 was somebody on the staff.

11 Q Your best recollection is he called someone
12 to tell them Mr. Foster was dead?

13 A Yes.

14 Q Did he receive any telephone calls while
15 you were there?

16 A I don't recall him receiving any.

17 Q Did you place or receive any telephone
18 calls?

19 A From Mr. Nussbaum's office?

20 Q While in the White House counsel's suite,
21 whether in his personal office or --

22 A Not that I recall.

1 Q While you were in the White House office
2 that evening, did you place or receive any telephone
3 calls?

4 A When I went back to my office, before I
5 went home that evening, I placed a call to Beth
6 Nolan. She indicated Bernie had already called her.

7 Q While you were in the White House counsel's
8 suite or in Mr. Nussbaum's office in that suite, did
9 you and he discuss whether or not there was a suicide
10 note?

11 A No.

12 Q It just didn't come up?

13 A No.

14 Q Did you and he discuss whether or not the
15 President had been informed of Mr. Foster's death?

16 A Not that I recall.

17 Q Did you discuss whether or not the First
18 Lady had been informed?

19 A No.

20 Q You don't recall anything more about your
21 conversation with Mr. Nussbaum than what we have
22 already discussed, I take it?

1 A That's correct.

2 Q When you left the White House counsel's
3 office that night, did you take anything with you?

4 A By "the White House counsel's office," you
5 mean Bernie's office?

6 Q The suite generally.

7 A The suite; no.

8 Q The distinction you are rightly making is
9 that the White House counsel's office also resides in
10 other parts of the White House complex?

11 A In the OEB, which is my office.

12 Q Do you remember taking anything from your
13 office?

14 A I don't, but I know I went into my office.
15 So, I don't know that I had anything that I would
16 have been working on. Quite honestly, I'm sure I
17 didn't. I don't really recall taking anything with
18 me.

19 Q You also stated that you were, I think you
20 said, in Mr. Gearan's office; is that correct?

21 A That's correct.

22 Q Ms. Myers was present there?

1 A That's right, and so was Bernie.

2 Q Mr. Nussbaum was present there. What do
3 you recall, if anything, about conversations that
4 took place in Mr. Gearan's office?

5 A The conversations were about the press
6 statement and when it should be released and what it
7 should say, and whether or not we should do it at
8 this time; those kinds of discussions.

9 Q Is that all you recall?

10 A Yes.

11 Q Was there any conversation about, for
12 example, sealing Mr. Foster's office or securing the
13 office in any way?

14 A No.

15 Q And when you spoke with Mr. Nussbaum
16 privately in his office on the evening of the 20th,
17 was there any conversation about sealing Mr. Foster's
18 office or securing Mr. Foster's office?

19 A No, I don't recall any such discussion.

20 Q Did that topic come up in your presence any
21 time on the evening of the 20th?

22 A On the evening of the 20th?

1 Q Yes.

2 A No.

3 Q Or let me include within the definition of
4 the 20th, the early morning hours of the 21st.

5 A Right. That's what I was doing.

6 Q What do you recall about your conversations
7 with Mr. Lindsey on that evening?

8 A I just recall we were consoling each
9 other.

10 Q How long did you remain at the White House?

11 A I don't know how long. I know it was
12 probably more than an hour. I just don't recall how
13 long it was, though.

14 Q Did you see Patsy Thomasson on that
15 evening?

16 A I didn't.

17 Q After you left the White House, did you
18 return to your home?

19 A Yes.

20 Q Did you have any further conversations on
21 the evening of the 20th or the early morning hours of
22 the 21st relating to Mr. Foster, excluding

1 conversations you may have had with family members?

2 A No.

3 Q I take it you returned to work on the
4 morning of the 21st at the White House?

5 A That's correct.

6 Q What involvement, if any, did you have in
7 the events surrounding Mr. Foster's death on that
8 day?

9 A I just remember that we spent the entire
10 day in Bernie's office. And by we, I guess the other
11 person who did that was Beth. But I think everybody
12 generally was there and spent most of the day over in
13 his office.

14 Q You mean literally in Mr. Nussbaum's
15 personal office?

16 A Right.

17 Q Were you physically present during any
18 meetings on that day in Mr. Nussbaum's office?

19 A Well, I don't know how you describe
20 meetings when everybody is kind of always around.
21 But there were discussions that day, I can remember,
22 about sealing the office.

1 Q What do you recall about those discussions?

2 A I can just recall whether or not to seal
3 the office and by sealing the office now, people will
4 say you didn't seal the office earlier. I can
5 remember that kind of discussion.

6 Q Who brought up the topic of whether or not
7 to seal the office?

8 A I don't really recall. I know that I
9 participated in that discussion, though.

10 Q Did you think it was a good idea to seal
11 the office?

12 A I think it would have been unclear to me
13 why we were sealing the office.

14 Q Did you express that view?

15 A I don't recall, but I am a very expressive
16 person.

17 Q It would have been your practice to say
18 something?

19 A It would have been my practice to say
20 something, yes.

21 Q Do you remember whether Mr. Nussbaum
22 expressed a view one way or the other about whether

1 or not the office should be sealed?

2 A I don't recall him expressing a view one
3 way or the other. I know that we did seal it. I
4 know that we wouldn't have done that over his
5 objection.

6 Q So you infer from the fact that it was
7 sealed that he at least acquiesced in that
8 conclusion?

9 A Yes, that would be my inference. That is
10 not my direct knowledge.

11 Q Do you have specific recollection of the
12 discussion about, as you indicated a moment ago,
13 about the possibility that by sealing it, the office
14 now, meaning the morning of the 21st, the White House
15 could be criticized for not having sealed it earlier?

16 A State that again.

17 Q I'm trying to paraphrase something I
18 thought you said, that there was discussion about the
19 possibility that by sealing it now, the White House
20 would raise the question of why it had not been
21 sealed earlier.

22 A Political critics might raise that

1 question.

2 Q My question is what do you recall about
3 that conversation.

4 A I don't really recall much more than that,
5 actually. I think that was not the actual
6 conversation. The conversation was about sealing the
7 office. I can just recall that part of the
8 discussion was that, but I don't recall that as being
9 the discussion.

10 Q I just want to know whether it was the
11 discussion or part of the discussion, just tell me
12 what you recall about that conversation.

13 A I don't recall anything more about the
14 conversation other than that.

15 Q Do you remember who raised that issue?

16 A No, but I know that it would not be
17 inconsistent with my own thought process.

18 Q So possibly you raised that issue?

19 A I don't know the answer to that, because I
20 think everybody thought about that too. I'm not
21 actually a political genius or guru, so I hate to
22 claim credit for something that is politically

1 obvious when I am not that politically astute.

2 Q During the course of this conversation, did
3 Mr. Nussbaum indicate to you or to anyone else in
4 your presence that he had already been in
5 Mr. Foster's office?

6 A I don't recall. I don't actually recall
7 him saying that. But I don't -- it would not have
8 surprised me if he had been in there.

9 Q For example, in the conversation about
10 those political critics who might later criticize the
11 timing of the sealing of the office --

12 A I do recall now one thing. I do recall
13 that Bernie was upset -- or wasn't upset but he
14 actually discussed the fact that Betsy had gone into
15 the office that morning to straighten it up because
16 she wanted the desk to look nice. He thought that
17 was a nice consideration on her part but we needed to
18 make sure that we didn't do that. I just remember
19 something like that kind of a discussion or somebody
20 saying something to that effect.

21 Q Betsy is Betsy Pond, Mr. Nussbaum's
22 secretary?

1 A Correct.

2 Q Did Mr. Nussbaum express displeasure about
3 Ms. Pond having gone in?

4 A Displeasure would be a strong word,
5 actually. I think he just said Betsy went in to
6 clean up.

7 Q And that she shouldn't have done that?

8 A He didn't say she shouldn't have done
9 that. He said something more like Betsy went in to
10 clean up, and he kind of made that statement. I
11 can't recall, though, whether or not that statement
12 was made after it had already been sealed or not.

13 Q I think you said earlier it is possible
14 that Mr. Nussbaum stated that he had entered
15 Mr. Foster's office, but today you don't have any
16 recollection of that?

17 A I don't have any recollection of him doing
18 that, but it is possible, yes.

19 Q Did he state whether or not Ms. Thomasson
20 had been in the office the evening before?

21 A I have no recollection of that, actually.

22 Q Your best recollection is that he did not

1 say that?

2 A Right. That's my best recollection.

3 Q Let me ask the same question with respect
4 to Maggie Williams.

5 A I don't recall Bernie discussing it. I can
6 recall that over the course of the ensuing week or
7 two that I learned that Maggie had gone in the office
8 and sat on the couch and cried. I just cannot tell
9 you how I learned about that.

10 Q You are pretty certain it wasn't on the
11 21st in Mr. Nussbaum's office?

12 A I don't recall it, but I wouldn't say that
13 I'm certain about it, because I don't recall.

14 Q What else do you recall about conversations
15 that may have taken place on that day in
16 Mr. Nussbaum's office?

17 A I don't know day by day because my days all
18 blend together. So I don't really recall any other
19 specific conversation related to that day. But I was
20 there most of that day.

21 Q Do you recall any conversations about
22 whether or not the Park Police or other investigators

28

1 could have access to Mr. Foster's office?

2 A I recall those discussions. I cannot tell
3 you that I recall those discussions being on that
4 day. I have no sense of on what day those
5 discussions were, but I do recall discussions with
6 regard to whether or not it was the Park Service who
7 was going to look into this matter, whether or not it
8 was going to be -- or another agency, I believe the
9 FBI, but I can't recall. I can remember discussions
10 about jurisdiction in that regard from the agents.

11 And then I can recall kind of just
12 discussion about the fact that obviously it is a
13 counsel's office and so we have to think about how to
14 treat the contents of the office to the extent that
15 there might be confidential or privileged material in
16 the office.

17 Q Let me represent to you that the review of
18 the contents of that office was conducted by
19 Mr. Nussbaum in the presence of others on the
20 afternoon of Thursday, July 22nd.

21 A Okay.

22 Q Does that help you place in time when the

1 discussions you have just been referring to may have
2 taken place?

3 A They probably took place between the 21st
4 and the 22nd.

5 Q Now, you have said that you spent the
6 better part of the 21st in Mr. Nussbaum's office.

7 A Uh-huh.

8 Q Did you spend the better part of the
9 morning of the 22nd in Mr. Nussbaum's office?

10 A Most likely.

11 Q What do you recall about the conversations
12 over jurisdiction that you have alluded to?

13 A I just recall that I guess one of the
14 agencies had found Vince, whereas the other one would
15 traditionally look into this kind of matter. So they
16 had to resolve which one of them was going to do it.

17 Q Were you actually physically present in
18 conversations involving representatives of the Park
19 Police or the FBI?

20 A No. I just remember that being they had to
21 decide which one of them was going to do it in light
22 of the fact that one person -- one agency found him

30

1 and the other agency would normally do this kind of
2 matter.

3 Q Were you personally present during any
4 conversations with representatives of the Department
5 of Justice on the 21st?

6 A No.

7 Q Did you become aware at any time on the
8 21st that the Park Police and FBI were physically at
9 the White House waiting to begin the investigation?

10 A On the 21st? No, I was unaware of that.

11 Q Even as you sit here today, you are unaware
12 of that?

13 A Right.

14 Q Do you recall anything more specifically
15 about the conversations that may have taken place in
16 Mr. Nussbaum's office on the 21st other than what you
17 have already testified to?

18 A No. I can recall there were conversations
19 about going to Little Rock for Vince's funeral.

20 Q Any conversations about the contents of his
21 office other than what you have alluded to about
22 privilege and confidentiality?

1 A No.

2 Q At any time on the 21st, were you present
3 when Mr. Nussbaum spoke with the First Lady?

4 A No.

5 Q At any time on the 21st, were you present
6 when Mr. Nussbaum or members of Mr. Nussbaum's staff
7 spoke with Mrs. Thomases?

8 A Well, I saw Susan that day. I don't
9 remember her speaking to the office per se.

10 Q Where did you see her?

11 A I don't know where I saw Susan. She was on
12 the second floor.

13 Q Was she in the White House counsel's office
14 suite?

15 A I don't recall. I think I recall talking
16 to her. I don't really recall where that happened.
17 I just remember that.

18 Q What understanding, if any, did you have of
19 why she was there?

20 A I know she was a friend of the Clintons.
21 That was my only understanding of why she would be
22 there.

1 Q What do you recall about the 22nd,
2 Ms. Mills?

3 A Nothing in particular. I don't have date
4 recollections.

5 Q You remember, we have fixed in time the
6 review of Mr. Foster's office being the early
7 afternoon of the 22nd.

8 A Right. I remember at some point there
9 being discussions about how the search was going to
10 be conducted, whether or not it was appropriate or
11 not for them to actually review documents that likely
12 were privileged, whether or not there was a way that
13 we could accommodate everybody's interest.

14 I can remember that the ultimate conclusion
15 was that Bernie would go through each document, since
16 they had indicated that they were looking for a note,
17 and just generally describe what the document was.
18 If it wasn't a note, they weren't interested. And
19 that that was the procedure that they were going to
20 use.

21 I recall that another attorney in our
22 office was going to sit in; I believe Cliff Sloan.

1 Q Your impression was that if it wasn't a
2 note, they weren't interested?

3 A Yes.

4 Q Where did you get that impression?

5 A Just from the discussions about why it is
6 that they wanted to look through all the contents of
7 his office. They wanted to know whether or not there
8 was any note or other, I guess, writing that
9 indicated if he or why he might have taken his life.

10 Q Who was present during the conversations
11 about how this search was going to be conducted in
12 which you were present?

13 A I don't know. Obviously Bernie was. There
14 were other members of our office who were present
15 too, but I don't know who in particular it was.

16 Q Any members or any individuals who were not
17 part of the White House counsel's staff present
18 during the conversations?

19 A Not in any of the conversations I
20 participated in.

21 Q Did Mr. Nussbaum or anyone else ever
22 express, in the course of those conversations --

1 strike that.

2 Did Mr. Nussbaum or anyone else ever speak
3 about whether or not the Department of Justice agreed
4 or disagreed with this review procedure?

5 A It was my impression at the time that it
6 went forward that everybody was amenable to the
7 approach that was going to be used.

8 Q And what is the basis of that impression?

9 A That's just my impression. I just
10 remember -- I don't remember there being any
11 discussions that I participated in that anyone was
12 unhappy with that approach or dissatisfied with the
13 approach.

14 Q Mr. Nussbaum, or no one else to your
15 knowledge, ever said, in your presence, this is going
16 to drive the Justice Department nuts or they won't
17 like this or they will say we are abusing the Justice
18 Department, words to that effect at all?

19 A I don't recall anything like that.

20 Q What was the reason for having the Justice
21 Department present, Ms. Mills, if they couldn't look
22 at documents?

1 A My understanding, they were looking for the
2 same things -- my understanding -- that the Park
3 Service was; that was any indications of a note or
4 any writings that would indicate why Mr. Foster took
5 his own life.

6 Q There were very high ranking officials from
7 the Justice Department there; did you know that?

8 A At the review?

9 Q Yes.

10 A I don't know what you mean by "high ranking
11 officials."

12 Q Mr. Margolis. Do you know him?

13 A Yes.

14 Q Do you consider him to be a high ranking
15 official in the Justice Department?

16 A Yes. I think I might have a different
17 definition.

18 Q We might.

19 A Like I think of Jamie and Janet as being
20 the high ranking --

21 Q He was not the Attorney General or the
22 Deputy Attorney General.

1 A Right.

2 Q Mr. Heymann was then the Deputy Attorney
3 General.

4 A Phil. That's why I would have said that.
5 I guess I don't consider him, because I end up
6 engaging in conversations with him, so I don't think
7 of myself as high ranking. You are asking for
8 characterizations that --

9 Q Whether or not he is high ranking, did you
10 know that Mr. Margolis was present?

11 A Hearing you say that doesn't surprise me.
12 I remember that there were some people from Justice,
13 and it would not surprise me that he was present. It
14 doesn't strike me as unusual.

15 Q What understanding did you have, based upon
16 your conversations or conversations that you may have
17 overheard, of why they were present?

18 A My understanding was just as I indicated,
19 that people were looking for and wanted to make sure
20 and determine if Vince Foster had taken his life.

21 Q Right. I think as you have described it,
22 the person who did the looking was Mr. Nussbaum?

1 A Correct.

2 Q And the Park Police and FBI investigators
3 were present, professional investigators?

4 A Yes.

5 Q Did it strike you as odd that senior
6 attorneys from the Justice Department would be there
7 to watch Mr. Nussbaum go through documents?

8 A No.

9 Q So therefore why did you think they were
10 there?

11 A Your question presumes that it would be odd
12 for someone to watch someone go through documents --

13 Q I don't mean to suggest that. Did it
14 strike you as odd that senior attorneys in the
15 Justice Department came to the White House to watch
16 Mr. Nussbaum go through documents?

17 A No. It doesn't strike me as odd right
18 now.

19 Q Why do you think they were there then?

20 A I think they were there because, if the FBI
21 was going to be involved in this matter, since they
22 are an agency that supervises them, they wanted to

1 ensure that everything, if they had a presence, to
2 ensure that everything happened according to whatever
3 notions they had.

4 Q Whatever notions who had?

5 A The Justice Department.

6 Q They were there to ensure that the review
7 was conducted pursuant to the way they would like it
8 to be conducted?

9 A That would be my expectation. My
10 understanding was that people were trying to
11 ascertain whether or not Vince killed himself.

12 Q I take it you were not -- perhaps you
13 were. Were you physically present for the review of
14 documents in Mr. Foster's office?

15 A No.

16 Q Have you spoken with Mr. Margolis about
17 that since that day?

18 A No. I have never spoken with Mr. Margolis
19 about it, period.

20 Q Now, you also mentioned that there was a
21 discussion in Mr. Nussbaum's office either on the
22 21st or the 22nd about the question of privilege.

1 A Right.

2 Q Did I hear you correctly?

3 A Yes.

4 Q Any particular privilege discussed?

5 A Executive and attorney-client is my
6 recollection.

7 Q Do you recall anything specific about the
8 discussions of executive privilege?

9 A No, I don't recall anything specific about
10 it.

11 Q For example, did anyone at that time
12 discuss whether or not the White House could assert
13 executive privilege vis-a-vis other executive
14 agencies?

15 A That would be in my notes, so I must have.

16 Q Do you think that occurred on that day?

17 A I don't know. My notes would be the best
18 evidence.

19 Q Was there any discussion to the best of
20 your recollection about whether or not the office of
21 legal counsel should conduct the review of documents?

22 A The office of legal counsel at Justice?

1 Q Yes.

2 A I was not aware of any discussions of that
3 type.

4 Q Did you ever become aware at any time that
5 the Justice Department had offered to provide a
6 review by the office of legal counsel of the
7 documents in Mr. Foster's office?

8 A No.

9 Q Even as you sit here today, that's the
10 first time you have heard that?

11 A Yes.

12 Q Now, you say there were also questions of
13 attorney-client privilege. What attorney and what
14 client, if you recall?

15 A I don't recall what attorney or what
16 client, but as I sit here today, I would assume the
17 attorney would be the counsel's office and the client
18 would be the President.

19 Q There was no discussion of whether or not
20 there may be documents relating to personal
21 attorney-client privileges between the President and
22 the First Lady and Mr. Foster?

1 A I don't recall any such discussion.

2 Q So at least as you participated in the
3 discussion, that was not an issue that you were
4 concerned about?

5 A No. I don't recall that being an issue
6 that was discussed.

7 Q Was there any discussion about whether or
8 not the Department of Justice or some investigative
9 agency might issue a subpoena?

10 A I don't recall. I can't recall -- no, I
11 can't recall that.

12 Q Whether it was on the 21st -- let me change
13 the time frame of the question.

14 At any time do you recall there being any
15 conversation relating to the contents of Mr. Foster's
16 office about whether or not a subpoena might be
17 issued with respect to the contents of that office?

18 A I don't recall that now. It doesn't strike
19 me as completely foreign, what you are saying, but I
20 don't recall it.

21 Q You worked closely with Mr. Sloan in the
22 time that you have been there?

1 A No more closely than other attorneys. In
2 fact, less closely than another attorney that I work
3 with most regularly.

4 Q What about Mr. Neuwirth?

5 A Yes, I work with Mr. Neuwirth.

6 Q Have you ever spoken with Mr. Neuwirth
7 about the review of the contents of Mr. Foster's
8 office on the 22nd?

9 A No.

10 Q Never?

11 A No.

12 Q Why is that?

13 A Because Mr. Neuwirth would never discuss
14 that. That is just the nature of his personality.
15 That's why I'm smiling.

16 Q I understand why he might not discuss it
17 today because it has been investigated by everybody
18 who can think to investigate it. What about on the
19 22nd, would he not have discussed that with you on
20 the 22nd?

21 A Are you talking about the finding of the
22 writing?

1 Q No. I'm actually talking about the review
2 of the contents of the office.

3 A I can just recall afterwards that Bernie
4 thought it went well, and he actually was the one
5 discussing it. And I didn't really have any reason
6 to say to Steve, did it happen any differently or
7 anything like that. So I don't know that there was
8 actually any need for a discussion.

9 Q I will come back to your conversation with
10 Mr. Nussbaum in a moment. Since I think I know the
11 answer to the next question, I take it you have never
12 discussed with Mr. Neuwirth the circumstances under
13 which he found the pieces of paper in Mr. Foster's
14 briefcase?

15 A No. I don't recall any specific
16 discussions with him about it. I mean, I can recall
17 being in a counsel's meeting where it was discussed.
18 I don't remember him participating in the discussion,
19 but listening to what was being said. That's my
20 recollection.

21 Q I take it you did have a conversation with
22 Mr. Nussbaum after the review of the contents of

1 Mr. Foster's office on the 22nd about that review?

2 A I think he was talking to people in our
3 office generally. I just can't recall if it was more
4 than me or if it was at a meeting. I just remember
5 him saying that he thought that things went well and
6 people seemed satisfied. That's my recollection.

7 Q Do you recall anything else?

8 A No.

9 Q Did he describe how he had conducted the
10 review?

11 A Yes. He said that he had gone through each
12 document and described what each document was, and
13 then would move on to the next document, and that he
14 was the one reviewing them.

15 Q Did he say whether or not any investigators
16 or others present had requested to see any of the
17 documents that he went through?

18 A I just recall one situation where someone
19 must have gotten up and looked at something, or
20 something like that. I don't recall -- I think that
21 that person didn't get to see it.

22 Q How did you learn about that event?

1 A I just don't recall. I think I was just in
2 general discussions in the office and I don't recall
3 if it was -- yes, I think it would have been Bernie
4 who would have probably said that, but I don't recall
5 in particular. I just remember general discussions
6 about it.

7 Q The event I'm aware of is an FBI agent
8 stood up and Mr. Sloan asked him if he was standing
9 up for the purpose of looking at documents. Are we
10 describing the same event?

11 A That probably was it. I don't know. I
12 wasn't in the room. I don't know if there was
13 another situation where somebody did something and
14 everybody said what are you standing up for. I don't
15 know.

16 Q Was that described to you as a humorous
17 event or an unfortunate event? Why did it come up at
18 all?

19 A I think it was discussion generally about
20 how the search had transpired and that generally
21 Bernie had looked at all the documents. At some
22 point someone stood up, but he continued to be the

46

1 one to look at the documents and describe them. I
2 don't really recall it coming up as -- I don't recall
3 it coming up as a humorous or negative thing. I just
4 recall it being something that was recounted.

5 Q Now, it has been described that
6 Mr. Nussbaum placed documents -- I don't mean to give
7 you a verbatim account of anyone's testimony. I'm
8 paraphrasing -- that he placed documents in
9 essentially three piles on Mr. Foster's desk; piles
10 that were personal documents for Mr. Foster, piles
11 that related to the first family's business and other
12 sort of privileged piles. The precision of this is
13 not important for my question. If you need to know
14 more precisely, I will try and be more precise.

15 In Mr. Foster's office, would there be
16 generally nonprivileged, nonconfidential documents,
17 to the best of your knowledge?

18 A Sure. If he had press releases or clips or
19 other things like that, which everybody gets every
20 day and sometimes you save particular clips because
21 it is an article on which you are working. That is
22 nonprivileged and nonconfidential. There might be

1 press releases he got related to matters he was
2 working on which would be nonprivileged and
3 nonconfidential.

4 Q As you sit here today, can you think of any
5 reason, in your legal experience in the White House
6 counsel's office, why investigators wouldn't be
7 allowed to look at nonprivileged, nonconfidential
8 documents?

9 A Well, yes. It comes up frequently. I can
10 think of it from the terms of to the extent that you
11 have press releases on which you are following a
12 matter or you are writing notes with respect to a
13 matter, I think it indicates what issues it is that
14 we are, A, working on or, B, considering. I think
15 there is a question as to whether or not those
16 documents in and of themselves are privileged based
17 on what is on them, what you are collecting.

18 Q I was trying to operate from the premise
19 that I thought we established that in the contents of
20 the office there would be nonprivileged,
21 nonconfidential materials. Your answer says, the
22 example you have chosen might be privileged.

1 Let's focus on any documents that would be
2 nonprivileged, nonconfidential. Can you think of any
3 reason why investigators wouldn't be allowed to look
4 at nonprivileged, nonconfidential materials?

5 A Well, the way you phrase the question is
6 difficult for me because it is not inherently clear
7 to me why they would get to look at the materials to
8 begin with. I'm probably not the right person to
9 phrase the question that way to.

10 Q What do you mean by that?

11 A It is not clear to me why they would look
12 at materials in Vince's office related to press
13 clippings or other nonprivileged, nonconfidential
14 information.

15 Q Would it surprise you to know that they
16 asked to look at press clippings and were denied?

17 A Would it surprise me? I don't know if it
18 would surprise me or not.

19 Q Putting aside for a moment why the
20 investigators might want to look at those
21 materials -- maybe they are just dumb. Who knows --
22 can you think of any legal reason why they couldn't

1 look at those materials?

2 A I don't know that I can think of a legal
3 reason why they should be able to look at those
4 materials.

5 Q They should be able to look at those
6 materials because they have asked and the White House
7 has said it is cooperating.

8 A At that time? Are you talking about at
9 that time?

10 Q Yes.

11 A You are talking about on the 21st or the
12 22nd?

13 Q Yes.

14 A Then I don't know.

15 Q Was it your impression that the White House
16 intended to cooperate based on all the conversations
17 you overheard?

18 A It is my impression that the White House
19 always intends to cooperate, but that doesn't mean
20 the White House excludes or doesn't consider
21 privileges that it has to consider in the institution
22 of the Presidency.

50

1 Q Other than what you have just described
2 generally about your conversations with Mr. Nussbaum
3 after the review, do you remember anything more
4 specifically on that?

5 A No.

6 Q Did you know that Mr. Nussbaum and
7 Ms. Williams returned to Mr. Foster's office after
8 the review conducted in the presence of Secret
9 Service agents on the afternoon of the 22nd?

10 A No. Or I don't have any recollection of
11 that right now.

12 Q You didn't see them in there?

13 A No. I don't remember seeing them in
14 there.

15 Q Did Mr. Nussbaum state one way or the other
16 whether or not anyone had asked him to keep the
17 office secure after the review that he conducted on
18 the afternoon of the 22nd?

19 A Not that I recall.

20 Q Did you ever become aware that Mr. Nussbaum
21 and/or Ms. Williams on the afternoon of the 22nd
22 removed documents from Mr. Foster's office?

1 A I became aware -- and I cannot tell you
2 whether or not I became aware from press accounts or
3 from conversations -- that materials that belonged to
4 Vince or personal materials of Vince went to the
5 Foster family's attorney, that materials that were
6 the President and First Lady's materials went to
7 their personal attorney, and that the other documents
8 were in the office. I do recall that division being
9 done.

10 Q Now, specifically referring to Mr. Nussbaum
11 and Ms. Williams, did you ever become aware that they
12 removed any documents from Mr. Foster's office?

13 A Well, I was aware that these documents were
14 given to those different parties. I don't know if,
15 when you say "removed" -- I was aware that these
16 documents were going to be provided to these
17 individuals.

18 Q Did you become aware of that sometime after
19 the fact?

20 A I just don't know the answer to that
21 question.

22 Q You don't remember being aware of that on

1 the 22nd, anyway?

2 A I remember Bernie saying that one of the
3 things they did when they divided up the piles was
4 they divided up the piles in such a way that there
5 was going to be a pile that went to Jim Hamilton's
6 law firm, there was a pile for the counsel's office
7 and one that was going to go to the personal
8 attorneys of the Clintons. I don't remember him
9 saying we are getting ready to do so or tonight we
10 are going to do so. I don't recall any discussion
11 relating to the timing of that.

12 Q Your impression, based on what Mr. Nussbaum
13 said, was that the documents going to the Clinton
14 personal attorneys were the documents that had been
15 placed in a file on Mr. Foster's desk during the
16 review?

17 A My impression is that I had a recollection
18 of there being three distinct, piles, yes.

19 Q And that the documents that were going to
20 Mr. Kendall, Mr. Barnett at that time, were the
21 documents that were in one of those three piles?

22 A That's correct.

1 Q Did you later learn that the documents went
2 to the residence before going to the Clintons'
3 personal attorneys?

4 A I have only learned that subsequent to all
5 of the events.

6 Q How have you learned that?

7 A From press accounts.

8 Q Have you had any conversations with anyone
9 with direct knowledge about that, on that topic?

10 A I just can't recall. I don't recall any
11 specific discussions with anyone about it. But if
12 something is in the newspaper, then we obviously talk
13 about it.

14 Q You don't, as you sit here today,
15 specifically remember speaking with Ms. Williams
16 about the documents in Mr. Foster's office?

17 A No.

18 Q Did you ever speak with Tom Castleton about
19 it?

20 A No.

21 Q Let me -- time is a little short. I don't
22 want to squeeze Mr. Ivey out.

1 Let me show you some documents, which I
2 think, Ms. Mills, are you handwritten notes. I will
3 ask you to help me with some of these. The first
4 document bears document production number Z000523.
5 It is a handwritten document bearing the date at the
6 top 7/28/93.

7 Off the record.

8 (Discussion off the record.)

9 BY MR. JOHNSON:

10 Q Have you seen this before?

11 A Yes.

12 Q Is that your handwriting?

13 A That is.

14 Q Can you tell us what this document is?

15 A It is notes from a counsel's office
16 meeting.

17 Q Is it your practice routinely to keep notes
18 on White House counsel's office meetings?

19 A Now? Just joking. That was just a joke.
20 Yes.

21 Q And your best recollection is that the date
22 at the top of this document is accurate?

1 A Yes.

2 Q Has any part of this document been redacted
3 so far as you can tell?

4 A Yes, I think it has.

5 Q It doesn't indicate on the document that
6 the White House has withheld any part of this
7 document. Ordinarily it is their practice to do
8 that. If you happen to have --

9 A I would have done this probably. When I
10 produced this, there was a subpoena where we had to
11 produce all responsive material relating to different
12 things. This would likely have been produced
13 relating to requests for information relating to
14 Vince's death, so it would have been redacted. I
15 would have redacted out all information that was not
16 in any way related to Vince Foster's death or
17 discussions related to his death.

18 Q You would have done that personally?

19 A Yes.

20 Q Do you think you would have informed the
21 White House counsel's office of the redaction?

22 A Yes. I think I would have.

1 Q Let me ask you about a couple --

2 A You can see my paper clip there, which is
3 paper clipped on a page where there was discussion
4 related to a matter on which someone had requested
5 documents.

6 Q Do you keep these documents in a notebook
7 or legal pad?

8 A They are in a notebook.

9 Q Do you have any notes of your meetings or
10 discussions in Mr. Nussbaum's office on the 21st or
11 22nd?

12 A I only have the notes that are there. I
13 don't know if any of those are of that date.

14 Q I don't believe I have --

15 A What date is this?

16 Q That's the 28th.

17 A No, no. This one.

18 Q That's the 23rd. For the record, we are
19 flipping through the notes.

20 A That would be it. It wouldn't surprise me
21 not to have any on those dates.

22 Q Would it be worth asking you to check your

1 notebook again and --

2 A No. I would have found it and I would have
3 turned it over. I have done this now three or four
4 times.

5 MR. IVEY: Just so I understand, the paper
6 clips indicate --

7 THE WITNESS: That was just me going
8 through and indicating where I needed to copy
9 responsive materials.

10 MR. IVEY: For the whole page, or is there
11 information that is redacted?

12 THE WITNESS: There is information that is
13 redacted.

14 BY MR. JOHNSON:

15 Q Let me just take you through some of these
16 notes of this meeting, and try and read them in part
17 for the record and in part because we only have one
18 copy. The first entry seems to say "dealing with
19 matters arising out of Vince's death that he cannot
20 discuss."

21 MR. SNYDER: Are you still on the 5/23?

22 MR. JOHNSON: Yes.

1 MR. SNYDER: I have something so we can
2 simplify this.

3 MR. JOHNSON: Terrific.

4 BY MR. JOHNSON:

5 Q Did I read that correctly?

6 A I believe so.

7 Q Can you tell us what you meant by that?

8 A My recollection is this was at a staff
9 meeting which would mean it was likely that Bernie
10 was discussing that he was dealing with matters
11 arising out of Vince's death that he was not at
12 liberty to discuss. I think my later understanding
13 of that was that it was the note or the writing that
14 was found.

15 Q You have come to learn since that time that
16 what he was referring to, in all likelihood --

17 A I believe that's what he was referring to.

18 Q The third entry, "do we have executive
19 privilege vis-a-vis executive branch," can you tell
20 us what you meant by that?

21 A Exactly what I wrote down.

22 Q Do you know who raised it?

1 A I don't know who raised it. I know it is
2 one of the issues we were discussing.

3 Q Why was it being discussed?

4 A The question was with respect to, I guess,
5 the documents.

6 Q The discussion surrounded the documents in
7 Mr. Foster's office; is that correct?

8 A Right.

9 Q At this meeting, Mr. Nussbaum and others
10 were discussing whether or not --

11 A The office was discussing. This is a
12 counsel's office meeting, which means all the staff
13 to the extent they were there that day would have
14 been involved in that discussion if they were there.
15 We have morning meetings every morning at 9:00.

16 Q So you can't attribute that question
17 specifically to Mr. Nussbaum?

18 A No.

19 Q All you know is it was discussed?

20 A Right.

21 Q Do you recall whether any opinions were
22 offered or any answers were given?

1 A I don't really recall specifically, though
2 obviously this one is an opinion here, "no executive
3 privilege vis-a-vis Justice Department." That is
4 definitely an opinion. I don't know who said it.

5 Q Was that your opinion?

6 A No, not my opinion.

7 Q You yourself don't have an opinion or you
8 don't have expertise in the area of executive
9 privilege?

10 A I did not express that opinion.

11 Q You have a different opinion?

12 A If you ask me to think about it, I likely
13 would.

14 Q So someone other than yourself expressed
15 the view that the executive privilege could not be
16 asserted against the Justice Department; right?

17 A That's correct.

18 Q The next sentence says "but there is
19 against independent prosecutor."

20 A That's correct.

21 Q What does that refer to?

22 A I think that refers to someone's knowledge

1 that based on their previous experience -- I don't
2 know who that would have been, but there were a
3 couple people in our office who previously had been
4 involved in independent counsel cases, that their
5 recollection would have been that there wasn't
6 against the Justice Department but in the independent
7 counsel context, there was.

8 Q On July 28th, 1993, to the best of your
9 knowledge, was there an independent counsel?

10 A No. So this would have been drawing on
11 someone else's previous experience.

12 Q Was there any discussion at that point
13 about whether or not there would be an independent
14 counsel?

15 A No.

16 Q What is the relevance of privilege against
17 an independent prosecutor as you understood it in
18 that conversation?

19 A When this question of executive privilege
20 was raised, someone was drawing on their previous
21 experience of having been involved in an independent
22 counsel situation where they learned, or it was their

62

1 determination that the White House did or didn't have
2 a privilege against that. And they were drawing upon
3 that to make some analogies as to whether in this
4 situation that was an accurate determination that
5 they reached from their previous experience.

6 Q What people that were in that meeting had
7 experience with independent prosecutors?

8 A I know that Bernie obviously has. My
9 understanding is that Cliff Sloan also has. I don't
10 recall who else was at the meeting. Those are two
11 individuals who I know who have. At this time Neil
12 Eggleston was not a part of our office, and he also
13 has had such experience.

14 Q Mr. Eggleston wouldn't have expressed this
15 view because he wasn't there?

16 A That's correct.

17 Q Based upon your knowledge about who it is
18 that had experience with independent prosecutors, is
19 it your best guess or recollection today that one or
20 the other, Mr. Sloan or Mr. Nussbaum, probably
21 expressed that opinion?

22 A I don't have that recollection but that is

1 a logical conclusion to draw.

2 Q You are clear in your own mind about there
3 was no discussion about whether an independent would
4 be appointed?

5 A Yes.

6 Q Was there any discussion about whether or
7 not an independent prosecutor would be appointed in
8 what the public has come to know as Travelgate?

9 A No.

10 Q You are not aware of any such discussions?

11 A No.

12 Q Did you know at any time -- do you have any
13 information about whether or not Mr. Foster had in
14 his office any documents relating to the White House
15 travel office?

16 A Did I know at that time?

17 Q Yes.

18 A I didn't have any conscious knowledge at
19 that time that he did or didn't, but it wouldn't have
20 surprised me if he did or did not. I knew it was a
21 matter he had worked on.

22 Q Then the next entry beneath that says

1 "materials on executive privilege" and it indicates
2 Cliff. What does that mean?

3 A I don't know what it means. My only
4 conclusion is that Cliff must have had materials on
5 executive privilege that he said he could look at.

6 Q Do you remember any discussions with
7 Mr. Sloan or anyone else on the topic of executive
8 privilege as it may relate to the contents of
9 Mr. Foster's office?

10 A No, I don't recall any discussions.

11 Q So to the best of your recollection, this
12 is the only time in your presence that this came up?

13 A Executive privilege?

14 Q As it relates to the contents of
15 Mr. Foster's office.

16 A I don't know that this is the only time it
17 came up. This is the only time I wrote it down. I
18 think I said in the beginning, I think when they were
19 thinking about the search, the issue was, given that
20 these documents might be privileged, whether or not
21 it was appropriate or not for other people to view
22 them. I wouldn't say this is the only time it came

1 up.

2 Q What about July 29, 1993, do you recall it
3 coming up again?

4 A In the context of the documents in Vince's
5 office?

6 Q Yes.

7 A I don't recall it but I wouldn't say it did
8 not come up. This is just the time at which I
9 reduced it to writing.

10 Q If it had come up and you had written it
11 down in any subsequent discussions, I take it we
12 would find it in these notes?

13 A Correct.

14 Q Can you switch to the next page, the notes
15 apparently of another counsel's meeting on the 29th
16 of July 1993, bearing document production numbers
17 apparently 524, 525 and 526. Again, Ms. Mills, this
18 is your handwriting?

19 A That's correct.

20 Q These are the notes that you made at a
21 routine counsel's meeting? I don't mean routine, but
22 there were counsel meetings every day. These are

66

1 notes from that?

2 A They are legible notes at that.

3 Q I will say they are. It is unusual.

4 A I will take that as a compliment.

5 Q It is. The first section of this seems to
6 describe the circumstances surrounding the discovery
7 of Mr. Foster's handwritten note; is that correct?

8 A That's correct.

9 Q There is an entry there that says "BN"
10 meaning Bernie Nussbaum?

11 A That's correct.

12 Q "Pulled out from the briefcase files --
13 left briefcase on ground."

14 A That's correct.

15 Q To the best of your recollection, are you
16 recording in substance what Mr. Nussbaum said about
17 the way he reviewed the briefcase?

18 A That's my understanding.

19 Q Did Mr. Nussbaum in this meeting state an
20 opinion one way or another about whether or not he
21 had missed the note?

22 A He indicated that the note was found in the

1 bottom, the pieces were found at the bottom of the
2 briefcase and the briefcase was standing, and so that
3 when he went into the briefcase to open it to pull
4 out the documents, he pulled out all the files that
5 were there.

6 So I guess to the extent that these pieces
7 of paper were at the bottom part of it when it was
8 standing up, then, yes, he would not have seen
9 those.

10 Q "Left briefcase on ground." Was
11 Mr. Nussbaum telling you that he never picked up the
12 briefcase?

13 A Right. In other words, when he went into
14 it, he didn't pick it up. He actually opened it and
15 pulled all the files out of it.

16 Q Was this, as you understood it, offered as
17 an explanation for how it would be possible to not
18 see the bottom of the briefcase?

19 A I don't know if it was offered as an
20 explanation. I know it was offered as a recitation
21 of what transpired.

22 Q You are clear that he said he left it on

1 the ground, he didn't pick it up?

2 A I'm not clear. That's what my notes
3 reflect. I generally tend to write down what I am
4 hearing.

5 Q It would be your practice to record
6 accurately what was said?

7 A I endeavor to do so.

8 Q Beneath that it says "office locked, no one
9 in on Friday, Saturday, Sunday."

10 A Uh-huh.

11 Q Did Mr. Nussbaum tell the assembled group
12 that he went back in after the search on the 22nd?

13 A On the 22nd?

14 Q Yes.

15 A I don't recall whether or not he did or
16 didn't.

17 Q Were you left with the impression that
18 after that search no one had been back in that
19 office?

20 A No. I was just of the impression that it
21 ended up being locked, and to the extent that these
22 notes reflect that, I think that he was indicating

1 that no one else went in.

2 Q I guess I'm really just trying to gain what
3 you understood from that. He is making a point, the
4 office is locked, no one in on Friday, Saturday,
5 Sunday. Did that suggest to you that no one also
6 went in after the search on Thursday?

7 A No, it did not.

8 Q In your mind, it left open the possibility
9 that lots of people went in on Thursday afternoon but
10 no one went in on Friday, Saturday or Sunday?

11 A That would probably be correct. I don't
12 know that I would say lots of people. I would say
13 people would have been in and out of the office on
14 Thursday if they had a need to go in.

15 Q Did Mr. Nussbaum ever say in words or
16 substance, did he indicate that he and Ms. Williams
17 had been back in the office on the afternoon of the
18 22nd?

19 A I don't recall any discussions about that.

20 Q As we sit here today, have you heard that
21 before?

22 A I don't recall. I don't think so, but I

70

1 don't recall.

2 MR. IVEY: The "missed it twice" is a
3 reference to the note?

4 MR. JOHNSON: Thank you, Glenn. Yes.

5 BY MR. JOHNSON:

6 Q You understood that, didn't you, when I
7 said did he indicate that he missed it twice on that
8 day, that I was referring to the scraps of paper at
9 the bottom of the briefcase?

10 A That's fine.

11 Q You don't need to change your answer to
12 that?

13 A That's correct.

14 Q Now, the next entries appear to indicate
15 how the note was discovered on Monday, which I take
16 it to refer to Monday the 26th of July 1993; is that
17 correct?

18 A I will take your word for the date. I know
19 it was Monday afterwards, after we came back from
20 Little Rock. I just don't know the date.

21 Q Was Mr. Nussbaum describing the events that
22 transpired in connection with the discovery of the

1 note?

2 A That's my understanding.

3 Q And Mr. Nussbaum also seems to have
4 described in that meeting who he showed the note to
5 on that day. Can you, by reviewing your notes, tell
6 me who he said he showed it to?

7 A Bill Kennedy.

8 Q And how do you know Bill is Bill Kennedy?

9 A He is the only Bill in the counsel's
10 office. He is also the only Bill who was close with
11 Vince Foster.

12 Q There also is a Bill Burton who works for
13 the Chief of Staff. Could it possibly be referencing
14 Mr. Burton as opposed to Mr. Kennedy?

15 A It is possible.

16 Q It says "called Mack in Chicago with
17 President. Gergen was with Mack."

18 A Right, which Bill Burton worked with Mack.

19 Q I can't read the next. That's the only
20 thing I can't read. It says "Gergen was with Mack."
21 What does it say after that?

22 A Says "it was heard."

1 Q "It" meaning the contents of the note?

2 A Correct.

3 Q And then on Thursday, it says "met with
4 Mack, Gergen, had to research whether it was
5 privileged," meaning the note was privileged?

6 A Correct.

7 Q "Asked Lisa to come to office to" -- I'm
8 sorry. "Asked Lisa to come to OFC"?

9 A That's office.

10 Q What does it say after that?

11 A President.

12 Q What does that mean?

13 A The President was informed Tuesday at 6:00
14 p.m.

15 Q Did Mr. Nussbaum say whether or not he had
16 shown the note to the First Lady?

17 A I don't recall any discussions about that.

18 Q Now, it was your understanding as he was
19 telling you this that he was describing the events
20 surrounding the note and who had seen it; is that
21 correct?

22 A That's correct. I was just writing down.

1 It is possible he could describe other things that
2 didn't get here. I generally try to write it down.

3 Q At least you didn't hear him say that the
4 First Lady had seen the note?

5 A I can't remember that. I can't recall.

6 Q If you had heard that, you would have
7 written that down?

8 A It is likely that I would have.

9 Q If you could switch to the next page, which
10 is 525. There is an entry about three-fourths of the
11 way down I'm struggling to read. It says "the
12 publicity will be back to" -- perhaps you can read
13 that?

14 A "The publicity will rise back to the
15 national news, sapped energy and concentration of the
16 White House."

17 Q What does that mean?

18 A It means it will again sap the energy of
19 the White House.

20 Q When the story breaks, it will be
21 distracting, that sort of thing?

22 A Also it refers to Vince's death. I think a

1 lot of people felt positively about him. I think it
2 was a very emotional issue to deal with.

3 Q Over on page 526 of these same notes at the
4 top, it says "the last couple of days he was up." Is
5 that a reference to Mr. Foster?

6 A It is. You people think I'm not honest.

7 Q You are referring humorously to the last
8 entry on page 526, I take it.

9 The next notes I have are on page 527 and
10 appear to be your notes of a meeting on August 11,
11 1993. Again, they would have been made
12 contemporaneously by you in that meeting; is that
13 correct?

14 A Yes.

15 Q It says "criminal wrongdoing charge by
16 Washington Times saying BN," which I take it to refer
17 to Bernie Nussbaum, "took a box out -- no." Do you
18 see that?

19 A Yes.

20 Q What are you recording there?

21 A I think there must have been a Times
22 article that was indicating that Bernie had taken

1 documents out of the office, which he was indicating
2 was not correct.

3 Q Mr. Nussbaum indicated to you that he did
4 not take a box of documents out of the office; is
5 that correct?

6 A Or whatever the article was saying to that
7 effect, he was indicating it was not correct; that's
8 correct.

9 Q Could you turn to the next page, 528. I
10 take it this is an entry on the same day.

11 A Actually, it was undated, so I don't know
12 the date of it.

13 Q Could you read it to me?

14 A "Post articles re: search of Vince's office
15 documents to Hamilton."

16 Q Does that mean anything to you today?

17 A It means there was an article regarding the
18 search and the fact that the Clintons' documents were
19 given to Jim Hamilton's law firm -- no, this wouldn't
20 have been the Clintons' documents. This would have
21 been the Foster family documents to Jim Hamilton.

22 To correct that, that would have been "re:

1 search of Vince's office, documents to Hamilton."
2 That would refer to documents of Vince's that were
3 personal that were given to the representative of his
4 family, which were given to his attorneys, which
5 would have been Swidler & Berlin."

6 Q The next notes are 12/20/1993. These are
7 your notes of the morning counsel's meeting?

8 A That would be correct, my understanding.

9 Q It says "absolute falsehood that
10 investigation is going on about removal of files from
11 Vince's office."

12 A Correct.

13 Q Whose words or sentiments are you recording
14 there?

15 A I can't represent whose they are, whose
16 words they are. They would not be inconsistent if
17 those were Bernie's words because he runs the
18 counsel's meeting, but I can't tell you that they
19 were.

20 Q Okay. Could you turn to the next page,
21 530. These, I take it, are again your notes of a
22 counsel's meeting on December 21st, 1993; is that

1 correct?

2 A That's correct.

3 Q Could you read that entry for us.

4 A "Whitewater file issue -- never asked for
5 file, personal files of Clintons turned over to
6 personal attorney."

7 Q Was this the first time you had heard any
8 reference to a Whitewater file in Mr. Foster's
9 office?

10 A That's correct, or that's the first time I
11 recorded anything. I don't really remember anything
12 before this time.

13 Q To the best of your recollection, by
14 reference to these notes, is the speaker who is
15 saying what you are recording Mr. Nussbaum?

16 A It is likely that it was him.

17 Q So, to the best of your recollection today,
18 Mr. Nussbaum told the White House counsel staff,
19 "Whitewater file," with respect to the Whitewater
20 file issue, they never asked for it?

21 A I think what actually was going on was that
22 there were press articles talking about this

1 Whitewater file, and he said that there was never any
2 discussion about or asking for the file.

3 Q Did Mr. Nussbaum indicate that he had told
4 anyone of the investigators or the Department of
5 Justice that there was a file labeled "Whitewater" in
6 Mr. Foster's office?

7 A I'm just not aware whether or not he did or
8 didn't.

9 Q Well, just as a foundation for the next
10 question, obviously if he didn't tell them, they
11 couldn't ask for it. You would agree with that?

12 A Right, but I was also unaware that it was
13 labeled "Whitewater." It was my understanding that
14 it was part of another file. But you obviously know
15 better than I whether or not it was labeled
16 "Whitewater."

17 Q I'm just trying to understand why it is, if
18 it is, that Mr. Nussbaum indicated to the counsel
19 group that there was a way for the investigators to
20 have requested the Whitewater file.

21 A My understanding is that Bernie went
22 through each file. So I think -- I don't know what

1 he actually said or didn't say. I don't know whether
2 he read through the file labels or not. I have no
3 recollection whether he did or didn't.

4 Q Was it your impression, as you wrote this
5 down, that he was conveying that he told them that
6 such a file existed and they didn't want to see it?

7 A No. It was more my impression that were
8 these conspiracy theories going up about a file
9 labeled "Whitewater." And he was saying this was
10 ridiculous, Whitewater wasn't even Whitewater at the
11 time. There was no sensitivity to that issue at the
12 time and so no one would have been looking for that
13 file.

14 So my impression, it could have been him
15 never even thinking about the file or asking for the
16 file. I do know it was based on a notion that no one
17 thought Whitewater was Whitewater.

18 Q You obviously don't know what Mr. Foster
19 may have thought?

20 A About Whitewater?

21 Q Yes.

22 A That's right.

1 Q And you wouldn't know what the President or
2 Mrs. Clinton may have thought about Whitewater at
3 that time?

4 A I still don't know what they might think
5 about Whitewater other than what I read in the
6 papers.

7 Q I am trying to clear up the record when you
8 say "no one thought Whitewater was Whitewater."

9 A I am saying to the extent that -- I am
10 saying that it was not the political issue that it
11 was now. At one time during the campaign Whitewater
12 came up and was looked at. I think no one else
13 thought of it as the political issue at the time,
14 then, as it is now.

15 Q Obviously if Mr. Foster was privately
16 concerned about the contents of the Whitewater file,
17 you wouldn't have any way of knowing that?

18 A No.

19 Q Similarly, if the President or First Lady
20 or anyone else were privately concerned about the
21 documents --

22 A If they were privately concerned and didn't

1 indicate it, I would have no way of knowing about
2 it.

3 Q I want to focus for a moment on this
4 because this indicates to me -- tell me if I am
5 reading it incorrectly -- that Mr. Nussbaum is
6 telling the White House counsel's office the
7 investigators never asked for the Whitewater file.
8 Is that your best recollection of what he said?

9 A No. I don't have a recollection one way or
10 the other of what he said in that regard.

11 Q This note doesn't mean anything to you?

12 A It is not that. It is not my recollection
13 that it means what you are saying, that they never
14 asked. Otherwise it would have been the case
15 typically, I would have put down DOJ or NPS or
16 investigators never asked for the file.

17 Q If it doesn't mean what I think it means,
18 what does it mean to you?

19 A I think it means to me what I have been
20 saying all along, which is that because Whitewater
21 was not a political issue at that time and there was
22 a file -- I don't know whether or not it was labeled

1 Whitewater or not -- it was my impression that
2 Whitewater was a part of a file that had other tax
3 forms or other things; to the extent that these
4 things were in a personal file related to the
5 Clintons, that it would not be one that would have
6 come to the attention of anyone or that anyone would
7 have asked for it.

8 If you are saying doesn't that imply that
9 they would have to have known about it to have asked
10 for it, to me that's not an illogical conclusions.

11 Q It is possible, as you read this today,
12 that Mr. Nussbaum was saying that he never knew that
13 there was a Whitewater file, he never asked for it?

14 A That is possible.

15 Q Beneath that says "personal files of
16 Clintons to" -- could you help me read that?

17 A "Turned over to personal attorney." "ATTY"
18 is what it says.

19 Q Was Mr. Nussbaum indicating to you that he
20 didn't know what was in the contents of those files
21 turned over to the attorney?

22 A I don't know whether he was indicating that

1 at all. I'm writing down my impression of what was
2 being said.

3 Q Your best recollection is that he said the
4 personal files had been sent to the Clintons'
5 attorneys?

6 A Right.

7 Q Did he indicate to you that they had been
8 sent directly to the Clintons' attorneys or did he
9 inform the group that they had gone somewhere else?

10 A I don't recall any discussion one way or
11 the other.

12 Q So as of December 21st, 1993, do you think
13 you were aware that the Clintons' personal files had
14 been placed in the residence for some number of days?

15 A I don't recall having any knowledge one way
16 or the other about that.

17 MR. JOHNSON: Can we take a one-minute
18 break.

19 (Recess.)

20 BY MR. JOHNSON:

21 Q I think we have covered the notes that I
22 have that relate to Mr. Foster and the White House

1 counsel's office. Before I move off that, are you
2 aware of there being any other notes, Ms. Mills, that
3 we haven't gone through or that haven't been produced
4 to us that relate to that topic?

5 A No, I'm not.

6 Q Generally speaking, the ones we have gone
7 through are the ones you recall having seen before?

8 A Right. It is the same stack.

9 Q Let me show you some pager records and ask
10 you to help me understand those. This document is
11 marked 000644 and 645, and I'm led to believe that
12 they are some printouts of pager transmissions to
13 you.

14 Can you just sort of, in as efficient a way
15 as possible, tell me what you learned from looking at
16 this page.

17 A Well, nothing.

18 Q Can you identify the date?

19 A No. Where is the date? No. Somebody
20 called me at 6:42 a.m.? They must know I'm in the
21 office early. Is that right? Is that what that
22 means?

1 Q That's what it means to me.

2 A I couldn't tell you. I think maybe at the
3 end that's the date.

4 Q 7/21, referring to July 21st?

5 A Right.

6 Q I will represent to you that our request
7 relates to 1993, so I assume it is July 21, 1993.
8 One of the entries says "please call signal
9 switchboard for call holding with J." Does that mean
10 anything to you?

11 A No. I don't know a Jerry Watson. It could
12 be that's the name of the officer. I don't know.

13 Q It doesn't mean anything?

14 A No.

15 Q Beneath that it says "please call Jeff,
16 urgent." Who is Jeff?

17 A I don't know.

18 Q It doesn't mean anything to you?

19 A Jeff? No, it doesn't. There are a number
20 of Jeffs, but I don't -- there was no Jeff in our
21 office. There is a Jeff Eller. I don't know who it
22 would have been.

1 Q There seems to be another couple of entries
2 down that says "urgent" again. It says "please see"
3 and then it says "urgent." Do you understand what
4 that means?

5 A I don't know. I don't know what "deleted
6 by NN" means either.

7 Q And then down at the bottom on that page,
8 at 10:47 in the morning apparently on the 21st, it
9 says "call holding David Watkins ASAP."

10 MR. SNYDER: You say the 21st, although my
11 copy seems to say 7/22.

12 MR. IVEY: Mine too.

13 MR. JOHNSON: Mine is blurred. Thank you.

14 BY MR. JOHNSON:

15 Q On the 22nd at 10:47 in the morning, do you
16 remember speaking with Mr. Watkins that morning?

17 A I don't have any recollection of speaking
18 with him that morning. I'm confident if he paged me,
19 I called him back.

20 Q As you sit here today do you recall
21 anything about that telephone conversation?

22 A No. I do assets, so I do aircraft and

1 things like that. It would have likely been related
2 to that since he is the office of administration.

3 Q Let me just jump to the next page, which is
4 649. These are the pager records of Marsha Scott, we
5 were told. The date here apparently is July 21st,
6 again of 1993. It indicates that you paged
7 Ms. Scott. Marsha is a woman, I take it?

8 A She is.

9 Q Do you have any recollection of that?

10 A I do have a recollection of paging her. I
11 can't recall that though.

12 Q What is Ms. Scott's job?

13 A At that time she was the director of
14 correspondence.

15 Q Does that mean anything to you?

16 A She is also a close friend of the
17 Clintons. I don't know what I would have been paging
18 her about; likely related to the funeral or other
19 issues.

20 Q Let me show you a document marked 663,
21 which I believe, Ms. Mills, are again records of your
22 pager, although I should ask you whether that's

1 right.

2 A It appears to be correct.

3 Q Can you decipher the top entry on that
4 page?

5 A "Call Patsy Thomasson ASAP"?

6 Q Yes.

7 A That's what it says.

8 Q Do you know what date? It says July 20.
9 It says July 27 after that.

10 MR. IVEY: Off the record.

11 (Discussion off the record.)

12 BY MR. JOHNSON:

13 Q Ms. Mills, referring to the first entry at
14 the top of document 663, which you have read to us
15 earlier as "call Patsy ASAP." In an off-the-record
16 conversation, we have been able to figure out among
17 Senate counsel that we think that call may have been,
18 that page may have been received on or about July
19 22nd, 1993. We know that by attempting to decipher
20 the code here. We understand that you don't have
21 that, you are not able to do that yourself.

22 Accepting that representation as an effort

1 to refresh recollection, do you have any recollection
2 of speaking with Patsy -- I take it Patsy is Patsy
3 Thomasson?

4 A That's correct.

5 Q Do you have any recollection of speaking
6 with Ms. Thomasson on or about the 22nd of July?

7 A I don't have any recollection. I return
8 all of my pages so I'm confident I would have
9 returned it.

10 Q Did you, in the course of your employment
11 at the White House, in roughly July of 1993 speak
12 with Ms. Thomasson frequently?

13 A She is not in the issues area I deal with.
14 I deal with appropriations and she was in the office
15 of administration. She is a person with whom I had
16 matters that I worked on.

17 Q I take it you don't have any recollection
18 today of the content of the telephone conversation,
19 if there was one?

20 A No, that's correct.

21 Q The next entries deal with John Podesta.
22 Who is he?

1 A He was a staff secretary until last week.

2 Q Do you have any recollection of speaking
3 with Mr. Podesta on the 21st or 22nd of July 1993?

4 A I don't have any particular recollection.

5 Q These entries don't mean anything to you
6 today other than you may have been paged by
7 Mr. Podesta?

8 A Right. I know at that time I was also
9 working on Joycelyn Elders's confirmation.

10 Q The next entry says "private plane for
11 Vince's sister." Were you assisting to arrange for a
12 private plane to get his sister to the funeral?

13 A No. I get ethics questions regarding
14 permissibility of that given that she is a federal
15 employee.

16 Q The next entry?

17 A Has my telephone number, which would be my
18 assistant paged me and told me to call my office.

19 Q You don't have any recollection today about
20 why?

21 A No.

22 Q Let me try and wrap things up very

1 quickly. I take it, as you sit here today, you don't
2 have any more or different knowledge about the
3 handling of the contents in Mr. Foster's office than
4 what you have testified about?

5 A That's correct.

6 Q And other than as you may have previously
7 indicated in your testimony, you have not spoken with
8 Mr. Nussbaum on this topic?

9 A No.

10 Q And you haven't spoken, to the best of your
11 recollection, with Ms. Williams on this topic?

12 A Correct.

13 Q I think you testified you have never spoken
14 with Patsy Thomasson on this topic?

15 A I don't know that I testified that I never
16 spoke with her. If you asked me whether I ever spoke
17 with Patsy Thomasson about her presence in the
18 office, that would be an accurate statement.

19 Q Have you ever spoken with her generally on
20 the contents of Mr. Foster's office or the
21 investigation into Mr. Foster's death?

22 A No. I've generally talked with her about

1 the fact that I am sad that he passed away, that I
2 miss him.

3 Q You don't have any idea, based on anything
4 she has said to you or you have said to her, what, if
5 anything, she may have done in Mr. Foster's office on
6 the evening of the 21st or 22nd?

7 A That's correct.

8 Q Have you ever spoken with Mr. Sloan or
9 Mr. Neuwirth directly about the review conducted on
10 the 22nd or the discovery of the note thereafter?

11 A No.

12 Q It has been reported in the press last week
13 or early this week that Mr. Sloan may have observed
14 the scraps of notes in the bottom of the briefcase as
15 early as the 22nd of July. Did you see that press
16 report?

17 A Yes.

18 Q Have you spoken with anyone about that?

19 A No, I have not.

20 Q You didn't speak with Mr. Sloan or
21 Mr. Neuwirth about it?

22 A I have spoken to my attorney.

1 Q Other than your counsel, you haven't spoken
2 with anybody about it?

3 A No.

4 Q Ms. Mills, is there any information you
5 would like to provide the Committee that I haven't
6 been clever enough to ask you about?

7 A No.

8 MR. JOHNSON: Thank you for your patience.
9 Mr. Ivey will have some questions and, assuming I
10 don't have any follow-up, I will say a word about
11 confidentiality.

12 EXAMINATION

13 BY MR. IVEY:

14 Q There are a couple questions I would like
15 to ask you. I will hop around to expedite it a bit.

16 You mentioned earlier that you were not
17 clear why the office, Mr. Foster's office, was going
18 to be sealed. I wanted you to elaborate on that.
19 What were your thoughts about that?

20 A It struck me as odd to do for a man who had
21 committed suicide. I didn't know why you would seal
22 an office for someone who had killed himself.

1 Q Why would it be odd?

2 A I don't know the reason why anybody would
3 want to seal the office. I don't know what there is
4 to seal. I think I thought of this as a human
5 tragedy and didn't think of it as a high ranking
6 government official who died, and therefore there
7 might be investigations or conspiracy theories as to
8 whether or not he actually did or did not take his
9 own life, and why he ended up in the park he was
10 found in, and whether anybody else was engaging in
11 any other activities. I had never been involved with
12 politics before.

13 Q Would it have made more sense to you, just
14 from a common sense standpoint, if there had been
15 indications of foul play or discussions of possible
16 homicide?

17 A Yes. It would have made sense to me in
18 that situation.

19 Q So the distinction you are drawing would be
20 between a death where it appears to be suicide as
21 opposed to homicide?

22 A Correct.

1 Q This comment about if we seal the office
2 now, we could be criticized for not sealing it
3 earlier, I wasn't clear about the context of that.
4 Could you give me some more explanation?

5 A I think the question was whether or not you
6 should seal the office. At least in my understanding
7 there was a discussion as to whether there was a need
8 to seal it. As you can probably tell, my own
9 naivete, you can extrapolate my position, that if you
10 seal it, at least in Washington, people think there
11 was a reason to seal it; and if you hadn't sealed it
12 earlier, that provides ample opportunity for other
13 things to transpire.

14 I think that's what people were thinking
15 about, because the act itself raises the question in
16 political people's minds why didn't you do it
17 earlier, and then we can speculate about what might
18 have transpired during that period of time.

19 Q Is that viewpoint based on political
20 considerations as opposed to legal and ethical
21 considerations?

22 A Yes.

1 Q I take it from your previous answer that
2 you didn't see any legal or ethical reasons to seal
3 the office?

4 A That's correct.

5 Q You also testified earlier that
6 Mr. Nussbaum mentioned Ms. Pond going into
7 Mr. Foster's office during a meeting, I guess, on the
8 21st. What was the reason that Mr. Nussbaum brought
9 that up?

10 A I think it was in the context of a
11 discussion about sealing the office and whether or
12 not, then the question will be, well, were people in
13 there. I think it came up that Betsy Pond had been
14 in the office and had straightened it up or was in
15 there to make Vince's desk look nice.

16 Q Did he express any concern about her being
17 in the office?

18 A If by "concern," you mean concern that she
19 would have done anything or taken anything, no.

20 Q Did you ever hear any conversations about
21 documents being removed from the office by anyone at
22 that point?

1 A At that point, no.

2 Q So, I take it from what you have said that
3 the view of Ms. Pond's entry was somewhat innocuous?
4 She hadn't removed any documents; she just
5 straightened up his desk?

6 A Right.

7 Q You also mentioned earlier that there were
8 some conversations about whether the Park Police
9 should go into the office or whether the FBI should
10 be involved?

11 A I don't even know if it was actually a
12 matter of going into the office. I remember the
13 discussion being with respect to, given that the Park
14 Police had actually found Vince and that the FBI
15 would normally have jurisdiction over this type of
16 matter, the issue was which one of those two agencies
17 was going to be the lead agency with respect to
18 looking into the matter.

19 Q Was there any discussion about the
20 Assassination Statute which governs the FBI's
21 involvement in this type of a death?

22 A I don't recall such discussions.

1 Q I take it the questions about whether the
2 Park Police should be involved or the FBI was
3 primarily jurisdictional?

4 A Correct.

5 Q Were there any expressions of concerns
6 about whether the Park Police could handle this
7 investigation or not?

8 MR. SNYDER: By "could handle," do you mean
9 capable of handling?

10 MR. IVEY: Capable of handling.

11 THE WITNESS: I don't recall specifically.
12 I do recall that there were discussions related to
13 the fact that this was typically the kind of matter
14 that the FBI handled and they had the most
15 experience. I don't remember discussions about
16 whether or not the National Park Service was
17 capable.

18 MR. IVEY: Off the record.

19 (Discussion off the record.)

20 BY MR. IVEY:

21 Q Did you hear any conversation -- I think
22 you used the phrase, at some point, about from the

1 agents. Did you talk with any agents about this
2 issue?

3 A I didn't talk. It was my understanding
4 that the representations being made to me were being
5 derived from conversations with them.

6 Q With FBI agents?

7 A Agents of the agencies. I'm sorry, not
8 necessarily agents. I can't recall the specific
9 context in which we were talking so I can't recall if
10 it was agents from the FBI or agents of both
11 agencies.

12 Q You testified earlier about concerns about
13 privileged documents in Mr. Foster's office. What
14 were the concerns? With respect to that issue?

15 A That as deputy counsel he obviously works
16 on a number of matters related to the Presidency and
17 that those matters typically enjoy a high level of
18 executive privilege.

19 Q Why is that?

20 A Why is that?

21 Q Yes.

22 A Well, because in order for I think the

100

1 leaders in government, including the Congress and the
2 President to be able to exercise their duties, there
3 are a number of matters on which they have to have
4 frank and candid advice from their advisors. In
5 order to do so and to preserve the ability of the
6 government to function effectively, as they see fit,
7 and the Constitution sees fit that they protect those
8 conversations unless there is a need that overrules
9 this.

10 Q You mentioned you were handling the Elders
11 confirmation?

12 A I participated. John Podesta was the point
13 person.

14 Q Did the White House counsel's office handle
15 confirmation matters generally?

16 A Yes.

17 Q During these confirmation proceedings, did
18 the White House counsel office become privy to
19 information with respect to these nominees that would
20 be very personal and considered sensitive
21 information?

22 A Absolutely.

1 Q And are there some nominees that come
2 through the White House counsel's office who are not
3 actually nominated for a position but they are vetted
4 or reviewed?

5 A Right. We are the office that makes
6 determinations or participates in making
7 determinations with respect to whether or not
8 candidates can serve, and whether or not there are
9 either legal or political issues with respect to
10 their previous background, life, whatever. We make
11 judgments with respect to whether or not they can or
12 cannot be nominated.

13 Q So, for a candidate that is vetted but not
14 nominated, I would assume that this same type of
15 person with sensitive information would be in the
16 possession of the White House counsel's office?

17 A That's right. I think at the time the
18 Supreme Court was one of the nominations that we had
19 looked at or were looking at. So that is another
20 nomination that would have been of that type, yes.

21 Q A candidate who was not nominated, the
22 information would never become public?

1 A That is always the goal.

2 Q Would those types of documents have been in
3 Mr. Foster's office on July 21st and 22nd?

4 A Yes.

5 Q There were some questions earlier about why
6 the Justice Department should have been present or
7 why the Justice Department was present during this
8 July 22nd search. I wanted to ask you some questions
9 about that.

10 First of all, I want to go back to the
11 issue about Mr. Margolis being the high ranking
12 official. What is his title in the Justice
13 Department?

14 A I don't know.

15 Q Do you know if he is a political appointee
16 or not?

17 A I don't know the answer to that.

18 Q By high ranking official of the Justice
19 Department, you mentioned Ms. Reno, the Deputy
20 Attorney General during this administration. I would
21 assume you might include maybe a few other of the
22 Assistant Attorney Generals, but would you include

1 senior attorneys, senior staff attorneys in that
2 list?

3 A No.

4 Q Do you know --

5 A Quite honestly, just because in my own
6 experience, I guess a number of these individuals I
7 worked with. I worked with Walter Dellinger who was
8 across the hall from me. Even though he is an
9 Assistant Attorney General, I am not giving him his
10 proper deference. Duval Patrick is a person I know
11 very well. He is also an Assistant Attorney
12 General. In terms of when people say "high ranking,"
13 I tend to think of the top three positions at the
14 Justice Department.

15 Q Is it routine for Justice Department
16 attorneys to have contact with the White House
17 counsel's office?

18 A Yes.

19 Q Why is that?

20 A We regularly have matters on which we work
21 together to ensure the President gets sufficient
22 advice as he goes about his daily business.

1 Q Have senior staff attorneys from the
2 Justice Department ever come to the White House, to
3 the White House counsel's office during your time?

4 A Yes.

5 Q Did you view those situations as unique or
6 unusual in some respect?

7 A No.

8 Q Would you view the suicide of a senior
9 White House official as a unique situation?

10 A I'm not aware of another instance of it.

11 Q You were asked some questions about
12 nonprivileged documents in Mr. Foster's office.

13 A That's correct.

14 Q Were you familiar with Mr. Foster's filing
15 system?

16 A No.

17 Q Do you know how many nonprivileged
18 documents he may or may not have had in his office?

19 A No.

20 Q Do you know if Mr. Foster segregated
21 nonprivileged documents from privileged documents in
22 his filing system?

1 A I would be very surprised if he did.

2 Q Would it be logistically feasible to try
3 and do that in a working counsel's office?

4 A No. I certainly can't and don't.

5 Q With respect to the legal basis for entry
6 into Mr. Foster's office, were you aware or have you
7 become aware at any point of any legal right that
8 investigators may have had to enter Mr. Foster's
9 office to go through his files?

10 A No, I'm not aware of any right.

11 Q So, your understanding would be that if
12 investigators ever looked through any files in
13 Mr. Foster's office or that had come from
14 Mr. Foster's office, it would only be because the
15 White House had consented to that?

16 A Short of any court involvement, yes, that
17 the White House had consented to it.

18 Q With respect to searching Mr. Foster's
19 office, do you think that there would have been
20 probable cause to get a search warrant to search
21 Mr. Foster's office, given the circumstances of his
22 death?

1 A I don't know the probable cause standard.
2 I don't want to speculate. But no, probably not.
3 That is just my own personal opinion. It is not
4 based on any legal analysis.

5 Q You testified earlier that your
6 understanding was there were no suspicious
7 circumstances surrounding his death.

8 A That's correct.

9 Q If he had been killed, you might view the
10 search warrant matter differently; would that be fair
11 to say?

12 A Right, that's correct.

13 Q Now, you were asked about White House
14 cooperation with respect to this investigation. Is
15 it fair to say that the White House has tried to
16 cooperate with investigators but at the same time
17 balance the interests of privilege in the White House
18 counsel's office?

19 A Yes, that would be fair. I think we
20 probably, in the balancing in this situation, as you
21 can tell by the notes I have turned over, that we
22 have made determinations of the balance, as this

1 investigation is very important and the need to
2 provide sensitive and privileged information.

3 Q Was there any research done with respect to
4 previous administrations and how cooperative they had
5 been with respect to investigations of this sort?

6 A At that time?

7 Q Yes.

8 A At that time, no.

9 Q Has any been done since then?

10 A Yes.

11 Q Is it fair to say that the Clinton
12 Administration has been at least as cooperative --

13 A We have been more. I am the person doing
14 the research.

15 Q More cooperative than what?

16 A Certainly more cooperative than in the
17 Iran-Contra situation. More cooperative than --
18 well, there has been a number. Yes, we have been
19 more cooperative.

20 Q Do you recall if matters of privilege were
21 discussed before your notes -- I think your first
22 note on Z523 is dated July 28, 1993.

108

1 A Yes.

2 Q Do you recall if there were discussions
3 about privilege before the meeting on the 28th?

4 A I just don't recall. I'm sure that there
5 must have been at the time when they were making
6 decisions regarding the search of the office.

7 MR. SNYDER: I think the earlier testimony
8 was, in the discussions on the 21st and 22nd, there
9 was a reference to a privilege issue.

10 THE WITNESS: Yes.

11 BY MR. IVEY:

12 Q Was that your recollection?

13 A Yes. My notes also, I think, reflect
14 that.

15 Q In your notes here there is reference to
16 the independent counsel that you have questioned --

17 A I think it was an independent prosecutor.

18 Q Thank you. Was it your understanding that
19 this was a conversation not in anticipation of an
20 independent counsel but an attempt to flesh out --

21 A The boundaries of privilege?

22 Q Yes.

1 A That would be accurate.

2 Q There is a reference in your notes, on
3 Z525, about the middle of the page, and I can read it
4 or pass it to you if you would like.

5 MR. SNYDER: Why don't you read it.

6 BY MR. IVEY:

7 Q It says "for Lisa -- gave comfort, gave BN
8 comfort, also cleared up mystery."

9 A "Lisa -- gave comfort, gave BN comfort,
10 also cleared up mystery (he was depressed over
11 criticism related to the job)." That is referring to
12 Vince Foster.

13 Q That was a comment made by who?

14 A By Bernie Nussbaum, who was the counsel at
15 that time.

16 Q Did he mention whether he had shown the
17 note to Mrs. Foster or not?

18 A He must have indicated that he had, because
19 he indicated what she said. I don't know whether he
20 showed it to her or told her what it said.

21 Q It was your understanding it was a comfort
22 to her to find out about that note?

1 A Right.

2 Q You were asked a question about "missed it
3 twice," I think was the language that was used. Do
4 you have any indication that Mr. Nussbaum went back
5 into Mr. Foster's office after the search on July
6 22nd and searched again for any note?

7 A I'm not aware of that.

8 Q Do you know if he ever searched the
9 briefcase in Mr. Foster's office again?

10 A I'm not aware of that.

11 Q Do you know if Mr. Nussbaum read off the
12 name of the Whitewater file during the July 22nd
13 search?

14 A I'm not aware of that.

15 Q So, all the questions about how
16 investigators could ask for a file if it hadn't been
17 read to you, those are all hypothetical questions?

18 A That's correct.

19 MR. IVEY: I have no further questions.

20 MR. JOHNSON: I have about three follow-up
21 questions that I need to ask.

22 MR. SNYDER: We will have to leave soon. I

1 don't mean to be rude.

2 MR. JOHNSON: It will take about five
3 minutes. We will need to come back if you have to
4 leave right now.

5 MR. SNYDER: Let's go ahead.

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q You told Mr. Ivey that in your opinion
9 there was no legal or ethical reason to seal the
10 office; is that correct?

11 A I don't know if that is my recollection.

12 MR. IVEY: That is not my recollection of
13 the testimony.

14 BY MR. JOHNSON:

15 Q I tried to write it down as specifically as
16 I could. In your opinion, at the time there was no
17 legal or ethical reason to seal the office. Do you
18 have a different recollection?

19 A If my recollection at the time is given
20 that the nature of the matter was that Vince
21 committed suicide, it did not seem to me there was a
22 reason to seal the office in that circumstance.

1 Q Mr. Ivey used the words "legal or
2 ethical." Do you mean to leave those out of your
3 answer or do you mean to include those in your
4 answer?

5 A Obviously, since it is a matter of opinion,
6 ethically I don't think so and particularly given
7 that I do ethics. But legally I am not aware -- but
8 that is just because I am not the person who would be
9 looking at the law in that respect -- why they would
10 be going in.

11 Q You disagree with Mr. Nussbaum's conclusion
12 to seal the office?

13 A I don't disagree with his conclusion to do
14 so. I think it was a very politically astute thing
15 to do. I think the question at the time was whether
16 or not there was a need to as opposed to whether or
17 not it politically was a good and smart thing to do.

18 Q The Department of Justice opened an
19 obstruction of justice investigation sometime after
20 July 26th, 1993 with respect to the handling of the
21 note and the passage of time between the finding of
22 the note and the turning it over to the Park Police.

1 Did you ever become aware of that?

2 A No, I don't have any specific recollection
3 of that.

4 Q As you sit here today, you are not aware
5 that they conducted an obstruction of justice
6 investigation?

7 A I don't believe so.

8 Q Mr. Ivey asked you whether it would have
9 been practical to segregate the privileged and
10 nonprivileged materials in Mr. Foster's office while
11 he was working in that office. Do you remember that?

12 A Yes.

13 Q You said it would not have been practical?

14 A Right.

15 Q It would have been very practical to have
16 separated them after the fact?

17 A Not necessarily. We end up getting some of
18 the files we work on too, so we would have to have
19 all the files to the extent we end up working on
20 them.

21 Q For purposes of conducting a document
22 review, wouldn't it have been possible to segregate

1 the documents into privileged and nonprivileged?

2 A In order to do so, he would have had to go
3 through those documents ahead of time to make those
4 determinations because sometimes you have to consult
5 the law when you are looking at a document making a
6 determination.

7 Q There were some documents that would have
8 been questionable?

9 A I think it is always a matter of prudence
10 for a lawyer to make certain that, as they make
11 determinations with respect to documents, that they
12 do so carefully and thoughtfully and always with
13 consideration of the law. That's how I try to do
14 it.

15 I would think no matter what, even
16 documents that are plainly obvious on their face, you
17 would always want to make certain that you are doing
18 your determinations carefully and with the care that
19 is due.

20 Q In the 2-1/2 hours that your notes indicate
21 that Mr. Nussbaum spent reviewing the documents, it
22 would not have been prudent or practical for him to

1 determine that any document was unprivileged in that
2 2-1/2 hours?

3 A I think it is possible you can determine
4 some documents are unprivileged. I certainly think
5 it is possible. I don't know if you are doing a
6 production for you-all if that would have been
7 prudent to do it in the sense of deciding on the
8 spot. I think you would have to be careful and
9 thoughtful about those decisions and make sure you
10 are consulting the law so you are preserving the
11 privilege.

12 Q In your judgment, it was right not to show
13 the Park Police investigators anything?

14 A I don't have a rightness or wrongness
15 opinion about it.

16 Q It was prudent?

17 A I think it was a cautious approach.

18 Q You testified that you have personally
19 conducted research into whether or not the Clinton
20 Administration has been more cooperative than
21 previous administrations --

22 A Actually, that is not quite accurate. I

1 have been doing research with respect to -- I don't
2 know how this is relevant or why --

3 Q Mr. Ivey asked the question. I don't
4 either. I'm following up.

5 A I looked at instances where other
6 administrations have asserted executive privilege or
7 have had documents subpoenaed.

8 Q You testified in response to Mr. Ivey's
9 question that you believe that the White House has in
10 certain --

11 A In this instance has been very, yes, more
12 forthcoming.

13 Q That's based on the research that you have
14 conducted?

15 A That would be correct.

16 Q Are there documents or notes or memoranda
17 reflecting that research at the White House?

18 A There are no documents or memoranda
19 reflecting that research on this matter.

20 Q How have you conducted that research?

21 A I said "this matter," meaning the Vince
22 Foster matter.

1 Q The research that you base your conclusion
2 that this administration has been more cooperative
3 than other administration, what documents, notes or
4 memoranda exist with respect to that conclusion?

5 A It is not clear to me that I have the
6 ability to tell you what documents exist since they
7 in no way relate to this investigation.

8 MR. IVEY: Are you asking her to produce
9 those?

10 MR. JOHNSON: Yes. She testified she has
11 done research with respect to executive privilege
12 comparing the cooperativeness of this --

13 THE WITNESS: I want to make sure I am very
14 clear. On the record I said I have looked at
15 previous instances of where previous administrations
16 have or have not asserted an executive privilege and
17 also what the activities with respect to those
18 matters were.

19 I have not said it was a matter of doing
20 that research for the purposes of comparison. In
21 fact it is completely different and an unrelated
22 matter. I have not done it for the purposes of

1 comparison but am able to look at now what has been
2 the determinations that were made here and make
3 judgments based on that.

4 I want to be particularly clear about
5 this. It was in no way related to this matter and in
6 no way conducted related to this investigation. It
7 is a matter of the general work of the counsel's
8 office to make determinations and to review materials
9 related to privilege. And a number of them obviously
10 are OLC opinions that have been written and that you
11 all obviously have access to.

12 Q Mr. Ivey asked you whether or not you
13 compared the cooperativeness of this
14 administration --

15 A He asked whether this administration had
16 been more cooperative than others with respect to
17 this matter. With respect to this matter, it is my
18 opinion that they have.

19 Q I may be mistaken, but I specifically
20 recall you saying "I know that because I did the
21 research."

22 A That's correct. I have done research with

1 respect to looking at instances of privilege and
2 assertions of privilege by previous administrations,
3 and that is why I am able to now look at cooperation
4 in this particular matter.

5 If you'd asked me this question less than
6 one week ago, my answer could not have been that
7 because it would not have been that.

8 Q I want to be clear. Did you mean to offer
9 as your testimony here today that, based on the
10 research you have done, it is your opinion under oath
11 that this administration has been more cooperative in
12 this matter than other administrations with respect
13 to the assertion of executive privilege? Is that
14 what you meant to say?

15 (Witness conferred with counsel.)

16 MR. SNYDER: Ms. Mills is not here today to
17 provide expert opinion on any issues. She was asked
18 a question about whether the position that has been
19 taken here with regard to turning over documents has
20 been, in her view, more forthcoming with regard to
21 executive privilege than she is personally aware has
22 been done in a number of instances in prior

1 administrations. She answered that question.

2 As I indicated to you at the outset, we
3 really were supposed to leave at 10:00. We are going
4 to be late.

5 If you have further questions, if they
6 relate to research that Ms. Mills has done on other
7 matters that have nothing to do with the Vince Foster
8 case where, in her duties as a member of the White
9 House counsel's office, she has researched issues as
10 executive privilege as they have been applied in
11 other cases, that will raise serious questions of
12 whether she is properly able to answer questions
13 about other work she has done in the White House
14 counsel's office on other matters.

15 If you are going to ask about that, we
16 would have to refer you to the White House counsel's
17 office as to whether that is a privilege issue.

18 MR. JOHNSON: I understand that.

19 BY MR. JOHNSON:

20 Q It raises in my mind, by responding as you
21 did, in response to the question, I thought you
22 specifically based your answer on research that you

1 said specifically you had done in response to
2 Mr. Ivey's question about whether or not the
3 administration had been more cooperative here than
4 other administrations had been. If you did do that,
5 it also raises a serious question about whether there
6 is a waiver of any privilege.

7 A A waiver of what privilege? It can't be a
8 waiver. You wouldn't allow the White House counsel
9 in here to be able to assert their privilege. How
10 can a privilege be waived when they haven't had an
11 opportunity to participate in these proceedings to be
12 able to assert the privilege.

13 Q I want to be clear what your testimony is.
14 You testified in response to Mr. Ivey's question that
15 it was your opinion that this administration had been
16 more cooperative in this investigation with
17 respect --

18 A "In this matter," I think I actually said.

19 Q The record will -- one of the great things
20 about a transcript is it will say whatever it says.

21 A That's right.

22 Q You said that it was your opinion that this

1 administration had been more cooperative in this
2 matter than prior administrations.

3 A By looking at my notes.

4 Q Did you not specifically testify that you
5 based that opinion on research that you yourself had
6 conducted?

7 A I based that opinion today on research that
8 has been done for other matters unrelated to this and
9 was not done at the time when the President made
10 determinations with respect to this.

11 Q Did you base your opinion, didn't you say
12 you based it on research that you had done? Just yes
13 or no.

14 MR. SNYDER: It is now 10:17. We
15 absolutely have to leave. The record speaks for
16 itself.

17 MR. JOHNSON: She can answer yes or no to
18 that one or you can direct her not to answer. "No"
19 takes a second and "yes" takes a second. "I direct
20 her not to answer" takes a second.

21 MR. SNYDER: I don't think that is a
22 question that can be answered yes or no. If you

1 think there has been a waiver based on the record as
2 it is now, you can take that position.

3 MR. JOHNSON: The thing I will tell you
4 that concerns me is she was very interested in being
5 helpful to Mr. Ivey in this little dance back and
6 forth about how cooperative everyone had been --

7 MR. IVEY: Wait a second.

8 MR. JOHNSON: -- I want to know if that was
9 based upon -- your opinion was based upon research
10 that you conducted, as I thought you said to
11 Mr. Ivey. You have said --

12 MR. IVEY: Let me talk here too.

13 MR. SNYDER: I don't mean to be rude.

14 MR. IVEY: I don't appreciate the "dance"
15 language --

16 MR. JOHNSON: Are you leaving? If so, I
17 will send a subpoena out today.

18 MR. SNYDER: We stated at the outset -- I
19 don't mean to be rude. We stated at the outset we
20 have to leave at 10:00. I have another commitment.

21 MR. JOHNSON: For the record, is she going
22 to answer the pending question?

1 MR. SNYDER: She has already answered the
2 question.

3 MR. JOHNSON: I know you have to leave.

4 MR. SNYDER: I don't know how she can
5 answer the question. I don't know what the question
6 is.

7 The record is clear, she has done research
8 on other matters. I am taking less time --

9 MR. JOHNSON: Let her read it back.

10 (The reporter read the record as requested.)

11 BY MR. JOHNSON:

12 Q Yes, no or don't answer is all we need and
13 we are done.

14 A I do think it is actually more complex than
15 yes or no in this regard. I do think also, given
16 that you all have made determinations about who can
17 and cannot be here, it would be helpful if you called
18 the counsel's office because you specifically used
19 the language of waiver. I am not in a position to
20 waive any of the privileges of the President.

21 Q So you can't answer that question as posed
22 without consulting?

1 A As posed with respect to whether or not you
2 believe it is a waiver --

3 Q I'm not asking whether it is a legal
4 conclusion.

5 A You did say that. That makes me have
6 reservations with respect to my answering of the
7 question. I would feel more comfortable with, after
8 you spoke with the counsel's office, I will try to
9 respond to the question.

10 MR. JOHNSON: Thank you for your patience.

11 (Whereupon, at 10:20 a.m., the deposition
12 was concluded.)

13

14

15

CHERYL MILLS

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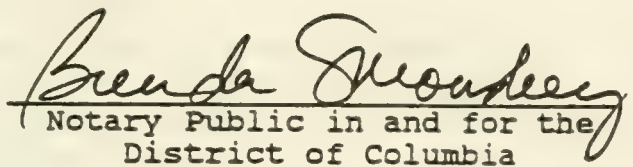
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

126

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
District of Columbia

My Commission Expires APRIL 14, 1996

**DEPOSITION OF BERNARD W. NUSSBAUM
IN RE: S. RES. 120**

VOLUME I

WEDNESDAY, JULY 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of BERNARD W. NUSSBAUM, called for examination pursuant to notice of deposition, at 9:45 a.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, Esq.
Majority Special Counsel
EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

JAMES F. FITZPATRICK, Esq.
PETER ZIMROTH, Esq.
Arnold & Porter
555 Twelfth Street, NW
Washington, DC 20004-1202
On behalf of the Deponent.

APPEARANCES

LAWRENCE B. PEDOWITZ, Esq.
ROBERT B. MAZUR, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6618
On behalf of the Deponent.

ALSO PRESENT: VINCENZO A. DELEO
TIMOTHY P. MITCHELL

CONTENTS

WITNESS

EXAMINATION

Bernard W. Nussbaum

by Mr. Chertoff 4

1 P R O C E E D I N G S

2 Whereupon,

3 BERNARD W. NUSSBAUM

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. CHERTOFF:

8 Q Would you please spell your name for the
9 record.

10 A N-u-s-s-b-a-u-m, Bernard W. Nussbaum.

11 Q Mr. Nussbaum, before we proceed I'm going
12 to give you some preliminary information concerning
13 the nature of the proceeding. My name is Michael
14 Chertoff. I'm the special counsel to the committee
15 that's conducting this proceeding. Mr. Richard
16 Ben-Veniste is the special counsel on the Democratic
17 side.18 The deposition here is being conducted
19 pursuant to Senate Resolution 120 which establishes a
20 Special Committee to conduct an investigation
21 involving Whitewater Development Corporation and
22 other related matters.

1 Section 1.B.1 of that resolution authorizes
2 investigation and public hearings into "whether
3 improper conduct occurred regarding the way in which
4 White House officials handled documents in the office
5 of White House Deputy Counsel Vincent Foster
6 following his death." And that's the topic that's
7 going to be the focus of today's deposition.

8 How did you first learn that you had been
9 requested to testify at the Senate proceeding?

10 A This --

11 Q This proceeding.

12 A This proceeding, not the last Senate
13 proceeding?

14 Q No, this one.

15 A How did I first learn I was requested to
16 testify?

17 Q Yes. From whom did you learn it?

18 A From my attorney, Mr. Pedowitz.

19 Q At the time that you learned it, were you
20 asked or requested to provide any documents in
21 connection with the deposition?

22 A These answers really would come much better

1 from my attorney, but the answer is I believe I was.

2 Q Either in connection with this deposition
3 or in connection with any other proceedings,
4 investigative proceedings regarding the handling of
5 the Vincent Foster documents, have you furnished
6 documents to somebody to be produced to investigators
7 or to the Senate?

8 A I believe we produced whatever was
9 requested if we had possession of the documents
10 requested.

11 Q And was that produced to the White House in
12 order to be furnished to the investigators or to the
13 Senate, or is it produced directly?

14 A I don't recall.

15 Q You did that through your attorney,
16 Mr. Pedowitz?

17 A Yes, this was handled by my attorney,
18 Mr. Pedowitz, and Mr. Mazur.

19 Q Is there anything you're aware that you
20 have in your personal possession that relates to the
21 handling of the documents in Vincent Foster's office
22 that you have not produced pursuant to a request by

1 law enforcement or by the Senate or Congress?

2 A I'm not aware that I possess anything
3 related to that subject matter, which was requested
4 and which I have not produced.

5 Q I should advise you this deposition is in
6 advance of a public hearing that's going to start on
7 July 18 and proceed for weeks thereafter, and there
8 would be a likelihood that you will be called to
9 testify in that. For purposes of this proceeding,
10 we'll ask you a series of questions and you'll
11 obviously be obliged to testify under oath in
12 response.

13 If you don't understand a question, please
14 let me know and I'll rephrase the question.
15 Likewise, please don't guess or speculate unless I
16 ask you to guess or speculate. If you need a break,
17 let me know, we'll take a break. We'll go off the
18 record.

19 The stenographer is going to prepare a
20 transcript of the questions and answers, which is
21 going to be treated as committee confidential until
22 the beginning of the hearings. I should advise you

1 that once the hearings begin, there's a high
2 likelihood that some or all of the deposition will
3 become public at some point in time.

4 You're represented by a number of counsel
5 here. Can I ask which counsel is going to speak for
6 the record?

7 A Mr. Pedowitz.

8 Q You may get an opportunity to talk to your
9 counsel if you want at any point in time. Just
10 indicate you want to do so, we'll go off the record.
11 We'll make available to you a room if you want to
12 talk at greater length. There may be some objections
13 to the form of questions. Please wait until we get
14 them on the record and then go ahead and answer.

15 If there's an objection that's accompanied
16 by a request that you not answer and instruction that
17 you not answer, let us address it among ourselves.
18 It may be that we can resolve it and you'll go ahead
19 and answer. It may be that we can't resolve it and
20 we'll agree to move on to something else. It may be
21 that we'll contact the Chairman of the committee who
22 will give the ultimate ruling about whether a

1 question should be answered or not.

2 You're going to have an opportunity, as we
3 said before we went on the record, to review the
4 transcript of your deposition, approximately four
5 days before the hearing begins, assuming that the
6 transcript is completed by then, and at any point
7 thereafter, and you can make corrections.

8 I should advise you that if you make
9 corrections that are other than ministerial or
10 clerical, we can redepose you on those changes. You
11 will receive a copy of the transcript four days
12 before you testify on the condition that you agree to
13 keep that transcript to yourself and your counsel,
14 not to disclose the content of it to anybody else
15 except yourself and your counsel until such time as
16 it becomes public. Is there any question based on
17 what I've said?

18 A No.

19 Q Mr. Nussbaum, you've previously testified
20 before the Senate last year in a deposition that was
21 then conducted by the Banking Committee; correct?

22 A That's correct.

1 Q There will be a little bit of repetition
2 here just to kind of get moving.

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10 Q What's your current business address?

11 A 51 West 52nd Street, New York, New York.

12 Q You're currently engaged in the active
13 practice of law?

14 A I am.

15 Q At Wachtell, Lipton, Rosen & Katz?

16 A Yes.

17 Q From the time you became aware of the
18 request to have you testify before the Senate in this
19 deposition, have you had any conversations with
20 anybody but your own personal attorneys or members of
21 your immediate family concerning the subject matter
22 of what you've been asked to testify about?

1 A No. I've just talked to my attorneys about
2 it.

3 Q And when you say your attorneys, you mean
4 personal attorneys?

5 A My personal attorneys, yes.

6 Q Without telling me what you have said or
7 been asked, am I correct that on a number of earlier
8 occasions you have been either interviewed or
9 questioned under oath by various investigative
10 agencies or individuals concerning the issue of the
11 handling of the Foster documents?

12 A Yes.

13 Q In connection with those interviews or
14 occasions of testimony, have you had any
15 conversations with anybody about the subject matter
16 of testimony on those occasions, except for your
17 private attorneys and members of your immediate
18 family?

19 A You know, I talk to other partners in my
20 law firm. I talk to people all the time, but I don't
21 talk about the subject matter of my -- I say I'm
22 going to testify or I'll be testifying or be

1 interviewed by various other agencies, you know.

2 Q But in terms of the substance of what
3 you've been asked or you've anticipated being
4 asked --

5 A No, I don't discuss that. I may discuss
6 with others the fact that I'm going to be questioned,
7 but I don't discuss the substance of what I'm going
8 to be asked or what my prospective answers would be.

9 Q Have you had conversations with anybody
10 from the White House counsel's office concerning the
11 subject matter of your testimony here, namely the
12 handling of the Vincent Foster documents since you
13 left the position of White House counsel in 1994?

14 A Prior to the last set of hearings, I was
15 interviewed by lawyers from the White House counsel's
16 office. White House counsel -- that was Mr. Cutler
17 and people who were working with him -- interviewed
18 me with respect to certain matters under
19 investigation. I believe then the hearings took
20 place that you and I participated in.

21 I believe since then, I have not been in
22 contact directly with the lawyers for the White House

1 counsel's office. I've not been interviewed by them.

2 Q In that set of interviews involving the
3 White House counsel's office in the summer of 1994,
4 did the subject of the handling of the Vincent Foster
5 documents come up?

6 A It may have. Those interviews were focused
7 more on the context with the RTC, which were the
8 subjects of our last hearings, but it may have come
9 up. I don't recall. If it did, I responded to their
10 questions.

11 Q Do you remember who interviewed you?

12 A Cutler, Jane Sherbourne, another woman.

13 Q Did they take notes or record it in any
14 way?

15 A Yes, they took notes of the interview.

16 Q Have you ever seen the notes?

17 A No.

18 Q Do you know whether your counsel has ever
19 seen the notes?

20 A No, I don't know if he's ever seen the
21 notes. I doubt it.

22 Q When did you become counsel to the

14

1 President?

2 A January 20, 1993.

3 Q When did you learn you were going to
4 receive the appointment as counsel to the President?

5 A Early in January 1993.

6 Q When was the first time you had discussions
7 with anybody concerning the possibility of being
8 counsel to the President?

9 A Late December -- either late December or
10 early January 1993.

11 Q When you say late December, you mean late
12 December 1992?

13 A Late December 1992.

14 Q Or early January 1993; correct?

15 A That's correct.

16 Q And when did you learn Vincent Foster was
17 going to become deputy counsel to the President?

18 A When I arrived in Little Rock in early
19 January of 1993. I don't remember the exact date.
20 When I arrived in Little Rock to discuss my
21 prospective appointment with the President, I learned
22 that Vincent Foster was going to become deputy

1 counsel to the President. He was selected as deputy
2 counsel, in effect, before I was selected as counsel
3 to the President.

4 Q Had you met Vincent Foster earlier than
5 that?

6 A No, I met him in Little Rock when I
7 arrived.

8 Q Did you participate in the presidential
9 campaign conducted by Mr. Clinton in 1992?

10 A In only a peripheral manner. I raised
11 money for the campaign. I was involved in
12 fundraising. But I wasn't involved in any full-time
13 basis. And from time to time I talked to various
14 people in the campaign.

15 When the Clinton campaign came to New York,
16 I went around with him. This is during the April
17 1992 primary. So I met some people from the campaign
18 and discussed some issues with them, but my main
19 activity -- not my sole activity but my main activity
20 was to try to raise money, and I raised some money
21 for the campaign but I didn't work on a full-time
22 basis in the campaign. I was busy in the practice of

1 law in a major matter so it took me -- whatever
2 desire I might have had to work more in the campaign
3 was taken up by that.

4 Q Did people in the campaign consult with you
5 about questions that came up from time to time that
6 you might have some expertise about?

7 A Yes, but it was not very frequent. Yes.

8 Q During 1992, did you become aware that an
9 issue was raised in the press concerning Whitewater?

10 A Yes.

11 Q How did you become aware of that?

12 A By reading in the press.

13 Q Did you have conversations with anybody in
14 the campaign in 1992 about that?

15 A I know I've had conversations about
16 Gennifer Flowers, when that arose in 1992. I clearly
17 remember -- that's what I remember being consulted;
18 what's the appropriate thing to do, what can we do.
19 I can't remember one way or another whether I had
20 conversations with respect to Whitewater. I don't
21 believe I did, but I cannot remember one way or
22 another.

1 Q Were you aware that an issue arose during
2 1992 about whether the President's financial
3 disclosure should be amended in order to disclose the
4 Whitewater investment?

5 A I have no memory of that.

6 Q Did you have any discussion with anybody in
7 1992 about the way the President's taxes should be
8 handled in connection with any impact Whitewater
9 might have on the taxes?

10 A I have no memory of that.

11 Q Let me direct your attention to the period
12 of time when you became counsel to the President as
13 of January 20, 1993. Did you and Mr. Foster agree on
14 a division of labor or any kind of allocation of
15 responsibility within the counsel's office at that
16 time?

17 A No.

18 Q Did you have discussion with him, either
19 before you began or at the time you began your
20 responsibilities, about his handling of personal
21 matters for the Clintons?

22 A No.

1 Q Were you aware at the time that you began
2 your job as counsel to the President that he was
3 going to be handling tax questions for the Clintons?

4 A I was aware at around the time I became
5 counsel to the President that he was working on
6 certain matters which had a personal component, but
7 also had an official component. That's what I was
8 aware of.

9 Q How did you become aware of that?

10 A By talking to Foster.

11 Q What were those matters?

12 A I recall he was working on helping them
13 file their tax returns. He was helping them with
14 their financial disclosure statements. He was
15 helping them with creating a blind trust, things like
16 that. I recall those three things specifically or
17 things related to that, that he was working with
18 outside lawyers and outside accountants with respect
19 to those matters, but they were the kind of things
20 that were official and required for the President to
21 do, and therefore, Foster was functioning in all
22 those things.

1 Q Were you involved in any of those matters
2 yourself, or did you become involved in any of those
3 matters yourself at any point in time before
4 Mr. Foster died?

5 A I don't believe so. He reported to me
6 generally what he was doing, and I knew what he was
7 doing in a general way. I had great confidence in
8 him as time went on, so I had very little concern
9 about virtually anything he was doing.

10 Q To whom did he report on those matters?

11 A Well, he reported to me in the counsel's
12 office, and he dealt with members of the First Family
13 and their staff and outside people with respect to
14 those matters.

15 Q Now, the issue of the blind trust had to do
16 with the establishment of a blind trust to hold the
17 Clinton assets while he was President; correct?

18 A Correct.

19 Q And the issue of the disclosure form had to
20 do with an official form that's required of all
21 appointees indicating their various assets; correct?

22 A Correct.

1 Q Do you know whether Mr. Foster worked on
2 anything to do with the Arkansas state disclosure
3 forms on behalf of the Clintons?

4 A I don't recall at this time if I knew that
5 at all. Arkansas state disclosure forms?

6 Q Yes.

7 A I don't recall if I knew that.

8 Q Is it your understanding there's any
9 federal official obligation or duty or responsibility
10 or jurisdiction concerning state financial disclosure
11 forms?

12 A Is there any federal responsibility?

13 Q Yes.

14 A I don't know.

15 Q Is it your view that there's an official
16 function of the office of the counsel to the
17 President in terms of assisting the President in
18 filing state disclosure forms from prior offices
19 being held?

20 A Well, state disclosure forms -- state
21 disclosure forms could have some relation to the
22 federal disclosure forms that he's filing, and

1 consequently there may be a federal component to
2 that. But the answer really is I don't know at this
3 point.

4 Q With respect to the handling of the
5 Clintons' taxes, at the time that Mr. Foster entered
6 on to his duties as deputy counsel, what was your
7 understanding of what work he was doing in connection
8 with the Clinton taxes?

9 A He was helping him prepare their tax
10 returns to be filed. The accountants were paying the
11 tax returns. He was providing information to the
12 accountants, gathering information for them for those
13 tax returns to be filed, and the tax returns would be
14 publicly disclosed.

15 Q This would be the 1992 tax returns?

16 A This would be the 1992 tax returns.

17 Q Is there any regulation or law or rule that
18 requires the tax returns to be publicly disclosed?

19 A That's what this President does, and it
20 becomes in my view an official act as a result of
21 that. Is there any rule or regulation? I don't know
22 of any rule or regulation. There may be. There may

22

1 not be.

2 Q You're not aware of any requirement of law
3 that the President and First Lady disclose their
4 taxes?

5 A As we sit here, I'm not aware of any
6 requirement. I am aware that this is what this White
7 House did and would do.

8 Q Mr. Foster, had he assisted, to your
9 knowledge, assisted the Clintons in the past in
10 handling their taxes?

11 A I don't know.

12 Q He's not a tax lawyer, is he?

13 A No, he's not a tax lawyer.

14 Q Did you understand him to be giving tax
15 advice?

16 A He's a -- what I understood was he was
17 assisting in the preparation of their returns, which
18 was gathering information for the returns to be
19 completed.

20 Q Was he gathering information in a
21 particular area?

22 A I have no knowledge of any particular

1 area. I have knowledge he was gathering information
2 with regard to the tax returns.

3 Q Do you know whether he was gathering
4 information in connection with the Whitewater real
5 estate investment?

6 MR. BEN-VENISTE: Is the question did
7 Mr. Nussbaum know then?

8 THE WITNESS: I was about to do that.

9 MR. CHERTOFF: Let me make it clear.

10 THE WITNESS: I was about to make a
11 distinction. I know now that he was.

12 BY MR. CHERTOFF:

13 Q Before July 20, 1993, did you know that
14 Mr. Foster was gathering information concerning the
15 Whitewater real estate investment of the Clintons?

16 A Before July 20, no.

17 Q Do you remember discussion in the White
18 House counsel's office concerning a real estate
19 investment by the Clintons?

20 A As we sit here now, I don't remember what
21 discussion you're talking about. It's possible there
22 was such a discussion, but I don't remember at this

1 moment.

2 Q You don't remember one way or the other if
3 before July 20 --

4 A Not before July 20. Before July 20, I
5 don't remember any discussion.

6 Q Let me be clear. In the period between the
7 time that you first met Mr. Foster in Little Rock and
8 July 20, 1993, were you aware of any discussions he
9 participated in or was present for regarding
10 Whitewater real estate investment of the Clintons?

11 A I have no memory of any such discussions.

12 Q Did that subject come up in the White House
13 counsel's office in any way, to your knowledge,
14 before July 20, 1993?

15 A As I sit here now, I have no such
16 recollection.

17 Q Were there other elements of the Clintons'
18 personal matters that were discussed in the White
19 House counsel's office before July 20, 1993?

20 A Personal matters?

21 Q Yes.

22 A I have no memory of any such discussions.

1 Q Was Mr. Foster, to your knowledge, spending
2 a substantial amount of his time in the White House
3 counsel's office working on personal financial
4 matters for the Clintons?

5 A During which period of time?

6 Q From the time he started as deputy counsel
7 until he passed away?

8 A From January 20th? No, I would say he was
9 not spending a substantial portion of his time. He
10 was spending a portion of his time working on
11 personal matters which had an official component.

12 Q Did you observe a lot of typing activity or
13 documents relating to the Clintons' personal taxes
14 during the period from January 20, 1993 to July 20?

15 A No.

16 Q Did you observe a lot of documentation
17 regarding disclosure forms in that period of time
18 between January 20 and July 20, 1993?

19 A No.

20 Q Did you observe or hear his secretary
21 discussing with him various aspects of the Clintons'
22 financial documentation during the period January 20

1 to July 20, 1993?

2 A No.

3 Q His secretary was Deborah Gorham; correct?

4 A Yes.

5 Q Was that a secretary he brought in with
6 him?

7 A No.

8 Q How was she hired?

9 A He asked around. He needed a secretary,
10 and she was recommended, and he hired her.

11 Q Who was Linda Tripp?

12 A Linda Tripp was a secretary who worked in
13 our office, worked for me primarily.

14 Q And was she there when you entered on to
15 duty?

16 A She was in the White House when I entered
17 on to duty. I think she came into my office later
18 on.

19 Q When was she working for you?

20 A I don't remember when she started. She
21 wasn't there in the beginning, at least I don't
22 believe she was there in the beginning. When I say

1 the beginning, I mean in the White House counsel's
2 office.

3 Q Was she working in the White House
4 counsel's office at the point in time that you left
5 the White House counsel's office?

6 A Yes.

7 Q What were her duties?

8 A She was one of my two secretaries for a
9 long period of time.

10 Q The other one being?

11 A Betsy Pond.

12 Q And as your secretary, was she responsible
13 for supervising any of the other secretaries in the
14 White House counsel secretarial group?

15 A It's a matter of dispute.

16 Q Dispute between whom?

17 A She and the other secretaries.

18 Q Did she have an official responsibility to
19 supervise the other secretaries?

20 A That's also a matter of dispute between her
21 and the other secretaries.

22 Q In terms of your state of mind?

1 A No. She was a senior secretary in my
2 office, but it was a very small office, and I didn't
3 consider her having supervisory authority over the
4 other secretaries. She may have had supervisory
5 authority over certain matters, correspondence or
6 something like that, but not general supervisory
7 authority.

8 Q Did you get along with her?

9 A Most of the time.

10 Q Let me direct your attention to July 20,
11 1993. Where were you when you first learned that
12 Vincent Foster's body had been discovered?

13 A At a restaurant in Washington.

14 Q Which one?

15 A Galileo's.

16 Q Do you remember how you learned about that?

17 A I was beeped by the White House, to go to
18 the telephone, and I went to the telephone.

19 Q At what time were you beeped?

20 A I don't remember. Do you want me to
21 guess?

22 Q Can you approximate a time?

- 1 A 8:30, 9:00, something like that.
- 2 Q Where were you in terms of the dinner, the
- 3 progress of the dinner?
- 4 A Actually, dinner -- the dinner was almost
- 5 complete.
- 6 Q Who were you eating with?
- 7 A My wife and another couple.
- 8 Q And who did you speak to on the phone from
- 9 the White House?
- 10 A Mark Gearan.
- 11 Q And what did he tell you?
- 12 A He told me Vince Foster had just been found
- 13 dead. He committed suicide.
- 14 Q He told you Mr. Foster had committed
- 15 suicide?
- 16 A Yes, I think so.
- 17 Q What did you say?
- 18 A I didn't say very much. I was stunned and
- 19 shocked. I said I'd come to the White House right
- 20 away.
- 21 Q Did you do that?
- 22 A Yes.

- 1 Q Did you stop anywhere on the way?
- 2 A No. We went directly to the White House.
- 3 Q Did you make any calls before you got to
- 4 the White House?
- 5 A No.
- 6 Q Do you remember what time --
- 7 A At least I don't remember. I don't believe
- 8 so. I should say that. I doubt I made any calls.
- 9 Q Do you remember what time you got to the
- 10 White House?
- 11 A 10 or 15 minutes after I received his call.
- 12 Q Where did you go?
- 13 A I went to the residence, to the ground
- 14 floor of the residence.
- 15 Q Why did you go there?
- 16 A Because -- I don't have a precise memory of
- 17 this. I think Gearan told me -- Mark Gearan told me
- 18 people would be meeting there or gathering there. I
- 19 also knew the President was on Larry King that night,
- 20 and I wanted to see the President, but I knew he
- 21 wouldn't be available until after the King thing. So
- 22 that's why I went there, to see the President and

1 because I think Gearan told me, I think Gearan told
2 me that people would be gathering there.

3 Q When you got there, did you see anybody?

4 A I did see people. This is vague in my
5 mind. I've thought about this. I think I -- at some
6 point I saw Gearan, Mack McLarty, the President after
7 he finished and just other people were around. I
8 don't remember who -- in the course of the evening I
9 saw a number of people. I saw Roy Neel, I saw Sylvia
10 Mathews. People started gathering in the White
11 House. I don't remember when I saw them or what
12 particular time I saw them.

13 Q Do you remember seeing the President before
14 he left to go to the Foster house?

15 A Yes, I remember seeing the President before
16 he left.

17 Q Were you in the residence from the time you
18 arrived at the White House until the time you saw the
19 President continuously?

20 A I believe so. That's my best memory.

21 Q At what point did you learn that
22 Mrs. Clinton had heard that Mr. Foster passed away?

1 A Mrs. Clinton was in Arkansas. I don't
2 remember when I heard that she was told or how she
3 was told.

4 Q After the President had left to go to --
5 well, let me withdraw the question.

6 Where did you see the President in the
7 residence that evening?

8 A When he came down to the ground floor right
9 after the -- where I was after the Larry King show,
10 he came off the elevator and I saw him then.

11 Q Did you have any discussion with him?

12 A Just -- we just exchanged stricken
13 condolences.

14 Q Was he on his way out to go to the Fosters'
15 house?

16 A Yes. I remember McLarty saying -- McLarty
17 was with him -- that they were on their way to the
18 Foster house, and some people left with them to go.

19 Q Did you consider going?

20 A I considered going, but I decided not to
21 go.

22 Q Where did you go next?

1 A I decided to go to my office to call
2 members of my staff, to try to reach some people to
3 let them know what happened before the news became
4 widespread. I didn't want people on my staff to hear
5 it on TV or the radio -- see it on TV or hear it on
6 the radio.

7 Q Did you go directly to your office?

8 A I recall walking from the residence
9 directly to my office.

10 Q And that's in the west wing; correct?

11 A That's in the west wing.

12 Q And how did you get into your office?

13 A I walked to it.

14 Q Did you unlock the door?

15 A No, the door was open.

16 Q Was anybody inside?

17 A Yes.

18 Q Who was inside?

19 A No one was inside my particular office.

20 Q Who was inside the suite?

21 A In the suite as I walked into the suite, I
22 noticed a light on in Foster's office, and I turned

1 to walk into Foster's office, seeing the light, and I
2 saw Maggie Williams and Patsy Thomasson.

3 Q What were they doing?

4 A Maggie was sitting on a sofa crying and
5 Patsy was sitting behind Vince's desk.

6 Q Doing what?

7 A Looking at the top of the desk.

8 Q What happened?

9 A You want to know what was said?

10 Q Yes, what was said next?

11 A I'll be glad to help you.

12 Q I'm just asking you what happened next?

13 A I said what are you doing here? And Patsy
14 said -- Maggie didn't say anything. Patsy said I'm
15 looking to see if he left a note. I said, that
16 occurred to me also on the way over, which it did.
17 Indeed I was going to go in and look for a note. I
18 said well, actually, that occurred to me, too. And
19 Patsy also said -- I said -- we just arrived. We're
20 looking for a note. We just arrived. I'm looking
21 for a note.

22 I said well, that occurred to me also, and

1 I went over to stand next to her, and we looked on
2 top of the desk, and we looked around, just sort of
3 eyeballing the room. We opened a number of drawers
4 in the desk. We saw nothing. There were a lot of
5 papers on his desk. And it ended. It concluded.
6 That cursory search for a note ended. We were
7 looking for something obvious. At least I was
8 looking for something obvious, a letter on the desk,
9 to whom it may concern, designed to be found. We
10 didn't see anything there.

11 Q The three of you were in there together?

12 A The three of us were in there together.

13 Q Then what happened?

14 A We chatted briefly about what a tragedy it
15 was, and we got up and we left together.

16 Q All three of you left together?

17 A That's what I recall.

18 Q And was it your suggestion that everybody
19 leave, or was it kind of just everyone got up?

20 A Everyone just got up and we all left
21 together.

22 Q Where did they go?

1 A They left the suite.

2 Q Where did you go?

3 A Into my office, which is right next to
4 Vince's office.

5 Q Did you shut the door to Mr. Foster's
6 office?

7 A No.

8 Q When you went into your office, did you
9 turn the light on?

10 A Yes.

11 Q And what did you do?

12 A I went to the phone, and I started making
13 telephone calls.

14 Q Who did you call?

15 A I called members of my staff.

16 Q Anybody else?

17 A I probably called my wife to see if she was
18 home from the restaurant.

19 Q Did you try to reach the First Lady?

20 A No, I did not try to reach the First Lady.

21 Q Did you call the Foster home?

22 A I did not call the Foster home.

1 Q Did you call the Department of Justice?

2 A I did not call the Department of Justice.

3 Q For how long were you in your office -- let
4 me withdraw the question.

5 How long were you in Mr. Foster's office on
6 the occasion you were in there with Ms. Williams and
7 Ms. Thomasson?

8 A My best memory is in the area of 10 minutes
9 or so.

10 Q And how long were you in your office making
11 calls?

12 A My best memory is in the area of an hour or
13 so. It could have been longer, it could have been
14 shorter, but about an hour.

15 Q How many people did you call?

16 A I tried to reach -- I didn't reach
17 everybody I wanted to reach. I tried to reach all
18 the lawyers on my staff, as many of the lawyers I
19 could reach. It was late at night, and I couldn't.
20 I connected with a number of them. It was a
21 difficult night, so the memory -- but I believe I
22 reached Cliff Sloan, and I think I reached Steve

1 Neuwirth. I think I reached Beth Nolan. I may have
2 reached others. I certainly left messages for others
3 and when I did reach somebody, obviously the
4 conversations were difficult.

5 Q Did you leave your office at any point
6 during this period that you were making telephone
7 calls?

8 A I don't remember. I just don't remember.
9 It's possible, but I don't remember. I might have
10 gotten up and walked out and come back. I was very
11 distraught, and so it's possible. I don't remember.
12 My memory is making the calls.

13 Q Do you remember whether you left for any
14 substantial period of time?

15 A I don't believe I left for any substantial
16 period of time.

17 Q When did you decide to stop making
18 telephone calls?

19 A After about an hour. I think I tried to
20 reach most people -- I either reached them or I
21 didn't reach them, and I stopped.

22 Q And then what did you do?

1 A What I did was I got up and walked out of
2 the office.

3 Q You say your office or the suite?

4 A The suite. I shut the lights off and I
5 shut the door. I went downstairs to the first floor
6 of the west wing before I left the White House.

7 Q Where did you go?

8 A I remember when I went downstairs -- when I
9 walked down, I saw the light on in the chief of
10 staff's office, chief of staff's suite, so I walked
11 into that suite.

12 Q Who was there?

13 A I recall Roy Neel being there, the deputy
14 chief of staff.

15 Q Anybody else?

16 A I think maybe Bill Burton was there. I'm
17 not sure of that. I spoke to Sylvia Mathews that
18 night, and I think I spoke to her more than once. I
19 may have seen her. People were walking around.

20 Q Now, from the time you went into the chief
21 of staff's office, did you go back into your suite,
22 the White House counsel's suite at any point later

1 that night or into the early morning hours of the
2 next day?

3 A No. The next time I entered my office was
4 the next morning when I arrived at the White House.

5 Q At about 8:00 or so?

6 A At about 8:00 or so, that's right.

7 Q When you left the White House counsel's
8 suite on the night of the 20th and you closed the
9 door, did you lock it?

10 A I believe so, yes.

11 Q Did you call the guard to indicate that the
12 alarm should be turned on?

13 A I think so. I mean, the normal practice
14 was to flip on the alarm, tell the guard you're
15 leaving and locking the door. I believe I followed
16 the normal practice. That's my best memory.

17 Q Did you leave anybody in the suite when you
18 left?

19 A No, I did not.

20 Q Did you remove anything from the suite as
21 you walked out?

22 A No, I did not.

1 Q When you walked into the suite and you saw
2 Ms. Thomasson and Ms. Williams, did you ask them how
3 they had gotten in?

4 A No, I didn't.

5 Q Did you wonder how they got in?

6 A No.

7 Q As you sit here now, do you have any idea
8 how they got in?

9 A No.

10 Q It was the regular practice of the White
11 House counsel's suite to make sure that the door was
12 locked and it was alarmed at the end of business;
13 right?

14 A Yes.

15 Q Were you the last one out that evening
16 before you went to the restaurant?

17 A That I cannot remember. In fact, I doubt
18 it because I left early that evening. It was a good
19 day -- in fact, I got home -- I do remember this. I
20 got home early, early being 6:00, 6:30, to meet our
21 guests for a drink prior to going to the restaurant,
22 so I significantly doubt that I was the last one --

1 I'm virtually certain I was not.

2 Q When you went in the suite for the first
3 time that evening after you had seen the President
4 and you were going back to the west wing, it's your
5 testimony that Ms. Thomasson and Ms. Williams were
6 already there?

7 A That's correct.

8 Q You did not take them into the suite?

9 A My memory is that they were already there.
10 I did not take them into the suite.

11 Q Without telling me specifically what you
12 have said to other investigators, am I correct that
13 within the period of a few weeks after the events of
14 July 20th, those events became the subject of various
15 investigations and inquiries?

16 A Yes.

17 Q So you had occasion within a very short
18 period of time after the events of July 20th to pay
19 attention to those events because you knew you were
20 going to be asked questions about them by various
21 agencies; right?

22 A Yes.

1 Q And it's also your testimony that when the
2 three of you left the suite, Ms. Williams and
3 Ms. Thomasson went out ahead of you and you remained
4 in the suite?

5 A We went out of Foster's office together.
6 They went out of the suite. I remained in the suite
7 in the sense of going into my own office. That's my
8 memory.

9 Q Did anybody else come into the suite while
10 you were in your own office?

11 A I have no memory of somebody coming into
12 the suite while I was in my office. Is it possible?
13 It's possible. I can just give you my best memory.
14 I have no memory of it.

15 Q You didn't hear anybody?

16 A I didn't hear anybody or see anybody. At
17 least I don't remember hearing or seeing anybody.

18 Q When you walked in the first time that
19 evening, and you saw Ms. Thomasson and Ms. Williams
20 in the office, were the lights to the suite and the
21 lights to your office -- when I say that, the lights
22 to the outer office and the lights to your office on

1 or off?

2 A The lights -- my memory is the lights --
3 there are three offices in the suite. There's the
4 secretarial area, there's my office and there's
5 Foster's office. My memory was that the lights in
6 the secretarial area, which is the first light you
7 turn on as you walk into the suites, and the lights
8 in Foster's office, were on, with Maggie Williams and
9 Patsy Thomasson there. I don't believe the lights to
10 my office were on, but I don't know. I don't
11 remember that.

12 Q Did you ask Ms. Thomasson or Ms. Williams
13 that evening how they had gotten in?

14 A I don't believe so, no.

15 Q Did you suggest to them at some point that
16 it was better for all of you to leave Mr. Foster's
17 office?

18 A I don't remember suggesting that. I
19 remember we were all getting up to leave.

20 Q But you didn't make the suggestion?

21 A I don't remember making the suggestion.

22 Q Was Ms. Williams in there during the entire

- 1 time that you were in Mr. Foster's office?
- 2 A Yes, that's what I remember.
- 3 Q And Ms. Thomasson was?
- 4 A That's what I remember.
- 5 Q Do you know Evelyn Lieberman?
- 6 A I know Evelyn Lieberman.
- 7 Q Did you see her that night?
- 8 A No -- well, I don't recall whether I saw
- 9 her that night. I don't recall whether I saw her
- 10 that night.
- 11 Q Did you see her at the entrance to the
- 12 White House counsel's suite?
- 13 A I don't remember seeing her at the entrance
- 14 to the White House counsel's suite.
- 15 Q Was the First Lady's office open?
- 16 A I don't know if the First Lady's office was
- 17 open.
- 18 Q Did you see a light emanating from it?
- 19 A I have no memory of seeing that.
- 20 Q That office suite is directly adjacent to
- 21 the White House counsel's suite; correct?
- 22 A Yes.

- 1 Q They both open into a common hallway?
- 2 A Yes.
- 3 Q And your recollection is when you left, you
- 4 shut the door and you locked it?
- 5 A That's my recollection.
- 6 Q And it was your regular practice to alarm
- 7 it?
- 8 A If I was the last one out, it was my normal
- 9 practice to alarm it.
- 10 Q And when you left that night, you had no
- 11 expectation anybody was going to be back in that
- 12 office; right?
- 13 A That's correct.
- 14 Q You knew from your conversations with
- 15 members of the staff that none of the staff were
- 16 planning to come in; correct?
- 17 A Nobody told me they were planning to come
- 18 in.
- 19 Q And as to the people that you left
- 20 messages, you didn't indicate to them they ought to
- 21 come in; right?
- 22 A That's correct.

- 1 Q And you had no expectation they would come
2 in; right?
- 3 A No.
- 4 Q So when you left, in your mind, no one else
5 was going to have any business in that office;
6 correct?
- 7 A That's correct.
- 8 Q Would you have had any reason --
- 9 A I may have seen one of my staff members.
- 10 Q Who?
- 11 A Cheryl Mills. I have some vague
12 recollection of maybe seeing her, but I'm not even
13 positive.
- 14 Q Did you see her in the suite?
- 15 A I can't remember. It's possible. I can't
16 remember.
- 17 Q What is your memory, if any, about what she
18 might have been doing in the suite?
- 19 A Just crying.
- 20 Q Was she in Mr. Foster's office?
- 21 A I don't think so, no.
- 22 Q Was she in your office?

- 1 A Maybe. I have this vague memory of perhaps
2 coming up while I was on the phone trying to reach
3 people. It's vague. I'm not positive about this
4 memory.
- 5 Q Was her regular office in the Executive
6 Office Building or in the west wing?
- 7 A Yes, but --
- 8 MR. PEDOWITZ: You have to answer the
9 question because it was an "or" question. Where was
10 it?
- 11 THE WITNESS: It was in the Executive
12 Office Building.
- 13 BY MR. CHERTOFF:
- 14 Q Did she have a key to the west wing suite?
- 15 A No.
- 16 Q Did you expect that when you left, she was
17 going to be getting back in the west wing suite?
- 18 A No.
- 19 Q Did she ask you to leave it open?
- 20 A No.
- 21 Q To the extent you recall a conversation
22 with Ms. Mills when you were on the phone, how long

1 do you think that was?

2 A Briefly. Just commiserating, if I had such
3 a conversation. This is a vague memory, and I'm not
4 positive about it.

5 Q Do you have a vague memory she was there
6 when you left in the suite?

7 A No. My memory when I left is nobody was
8 there.

9 Q Is there any reason when you left the suite
10 that night, July 20th, that you would have left that
11 door open?

12 A No, there's no reason I would have left
13 that door open.

14 Q And it was your regular practice on every
15 other night when you believed yourself to be the last
16 person in the suite to lock the door and alarm it;
17 correct?

18 A That's correct.

19 Q Now, when you went down to the chief of
20 staff's office, did you have a conversation in the
21 presence of Sylvia Mathews concerning the White House
22 counsel's office?

50

1 A In the presence of Sylvia Mathews?

2 Q Yes.

3 A Yes.

4 Q What was the conversation and with whom was
5 it?

6 A I had -- I had two conversations with
7 Sylvia Mathews that I remember. One conversation she
8 came up to me someplace in the west wing. It could
9 have been outside. My best memory it was outside the
10 White House counsel's suite in the hallway, that's on
11 the second floor, in which she said she'd run into
12 the cleaning lady who had removed the trash from
13 Vince's office and it was possible to recover the
14 trash from Vince's office, should she do so? Did I
15 think it advisable to do so. And I said yes.

16 Q Was this encounter during the period of
17 time that you were in the White House counsel's
18 suite, I mean that it was open and you were in and
19 out?

20 A My memory is I was sort of standing in the
21 hallway of the White House counsel's suite when she
22 came up to me and asked me this question, and I

1 responded in the affirmative.

2 Q This encounter occurred after Ms. Williams
3 and Ms. Thomasson had left the suite; correct?

4 A Yes, I believe so.

5 Q And the suite was still open; right?

6 A Yes.

7 Q And you were still using your office to
8 make calls; right?

9 A Yes.

10 Q So you agreed with her that she should
11 reclaim the trash?

12 A If she could. If she could, she should
13 reclaim the trash.

14 Q Did she come back with the trash?

15 A That's why I started -- after I locked the
16 suite and went down to Neel's office, I have this
17 recollection of -- I think it was her -- coming with
18 a -- trash in a plastic bag, see-through plastic bag,
19 saying I've recovered the trash, this is the trash
20 that I recovered from the cleaning lady who took it
21 out of Vince's office. What should I do with it?

22 Q And what did you say?

1 A I said leave it here in Roy Neel's office,
2 because I had already closed the suite. I was down.
3 I was on my way out. I said leave it here and we'll
4 take it back up tomorrow. And so she just left the
5 bag of trash in Roy Neel's office. That's my memory
6 of that conversation.

7 Q So the reason you didn't send her up to the
8 suite to replace it in the suite was because you had
9 already locked the suite?

10 A That's correct.

11 Q And did she, to your knowledge, do what you
12 asked her to do?

13 A Yes, she put it in Mr. Neel's office. She
14 put it right down. I was in Mr. Neel's office when I
15 said this to her.

16 Q When you came into your suite earlier that
17 night on the occasion you found Ms. Thomasson and
18 Ms. Williams there, did you see any cleaning people
19 around?

20 A I don't recall whether I did or not.

21 Q Did you see a uniformed Secret Service
22 agent?

1 A I don't recall seeing a uniformed Secret
2 Service agent.

3 Q Do you know whether Ms. Thomasson had her
4 security clearance as of July 20, 1993?

5 A I don't know.

6 Q Do you have any inkling?

7 A Ms. Thomasson was a fairly senior official
8 in the White House. I don't know. There was delay
9 in getting people's security clearances. It took a
10 long time to go through that process. I don't know
11 if she had hers or she didn't have hers.

12 Q Was there a delay that you remember in her
13 particular case because of some things about her
14 background?

15 A No, I don't remember.

16 Q You don't remember that?

17 A No, I don't remember any delay because of
18 some things in her background.

19 Q So when she was in the office on July 20th,
20 you didn't know at that point in time whether she had
21 her security clearance or not?

22 A That's correct.

1 Q Did you have a conversation with
2 Ms. Mathews also that night after you left the White
3 House counsel's suite and locked it up concerning the
4 burn bag?

5 A I don't remember any conversations about
6 the burn bag.

7 Q Now, the White House -- am I correct that
8 the White House counsel's office had two types of
9 ways of removing trash. There was the regular trash
10 removed in plastic bags and wastebaskets and there
11 were striped paper burn bags in which sensitive trash
12 was put?

13 A That's correct.

14 Q Did you have a conversation with
15 Ms. Mathews in which she indicated to you that she
16 had retrieved a general burn bag for the second floor
17 of the west wing?

18 A I don't remember that conversation. All I
19 remember is the conversation about the trash.

20 Q So you don't remember one way or the other
21 the conversation?

22 A That's correct, I don't remember one way or

1 another.

2 Q Did you have a conversation that night
3 after you had left the White House counsel's suite
4 and locked it up concerning whether the office was
5 secured?

6 A Do I remember having a conversation that
7 night concerning whether the office was secured?

8 Q Yes.

9 A With whom?

10 Q With Mr. Burton.

11 A I don't remember that conversation.

12 Q In the presence of Ms. Mathews?

13 A I have no memory of it. I'm not saying it
14 didn't take place. I just have no memory of it.

15 That was a difficult night, you know.

16 Q So you don't remember one way or the other?

17 A I don't remember one way or the other.

18 Q Let me ask you if I can refresh your memory
19 by reading you a portion of a note by Sylvia
20 Mathews. For the record it's Z139 and --

21 MR. BEN-VENISTE: Hold on for a second,
22 please.

1 MR. ZIMROTH: What is the number?

2 MR. CHERTOFF: Z139. I'm just going to
3 read you the second paragraph and ask if this
4 refreshes your memory. This is from Sylvia Mathews:
5 "I then asked the three of them if anyone had made
6 sure that the trash had not been dumped in Vince's
7 office. At that point Bill said we should get Bernie
8 and lock the office. I am uncertain what time that
9 was but probably after 10:00 p.m. I don't remember
10 who told Bernie but he went up and locked the
11 office."

12 Does that refresh your memory?

13 A No.

14 (Pause.)

15 Q Did you have any other conversations with
16 anybody on the evening of the 20th regarding sealing
17 or securing Mr. Foster's office?

18 A You asked --

19 MR. PEDOWITZ: The question is somewhat
20 objectionable.

21 THE WITNESS: Correct.

22 BY MR. CHERTOFF:

1 Q Apart from any prior testimony, have you
2 had any conversation -- did you have any conversation
3 with anybody on the night of the 20th concerning the
4 sealing or securing of Mr. Foster's office?

5 A I have no memory of such a conversation.

6 Q And you are confident that you didn't go up
7 to lock the office at someone's request?

8 MR. BEN-VENISTE: Excuse me. The first
9 time you asked that question, you used the word
10 "secure." Now you've used the word "seal."

11 MR. CHERTOFF: I think I said secure and
12 seal -- or seal.

13 MR. MAZUR: Seal or secure.

14 BY MR. CHERTOFF:

15 Q You're quite confident you didn't go up to
16 secure the office or lock the office at someone's
17 request?

18 A That's my best memory.

19 Q After you -- I'm sorry, when you were in
20 the chief of staff's suite with Mr. Neel and
21 Ms. Mathews and whoever else was there, did you have
22 any other conversations, apart from what you've

1 testified about?

2 A Not that I remember.

3 Q Do you remember how long you were there?

4 A Not a long time, but I don't remember how
5 long, five minutes, 10 minutes, 15 minutes. People
6 were very depressed, very distressed.

7 Q Were you involved at all in the preparation
8 of a press release that was going out that night?

9 A No.

10 Q Did you have any contact with anybody at
11 Vince Foster's home that night?

12 A No.

13 Q Did you have any conversations with
14 Mr. Gearan after the period of time in which you left
15 the residence?

16 A I don't remember. I may have. I just
17 don't remember.

18 Q Did you see the President later that night
19 or in the early hours of the next morning?

20 A No.

21 Q Did you talk to him again?

22 A I did not.

1 Q Did you talk to Mr. Gergen?

2 A No, I didn't. I don't remember talking to
3 Mr. Gergen. Mr. Gergen may have been one of the
4 persons who came down with the President from the
5 Larry King show on the way to Foster's house and I
6 may have said something to him then but I don't
7 remember talking to him again.

8 Q Did you talk to Mrs. Clinton that evening?

9 A No.

10 Q Did you talk to Susan Thomases?

11 A No.

12 Q Do you know Susan Thomases?

13 A Yes.

14 Q Did she have an official position with the
15 White House in any way in July of 1993?

16 A No.

17 Q Do you know whether she had any
18 professional relationship with the Clintons in July
19 of 1993?

20 A She had a relationship with the Clintons.

21 Q A professional relationship?

22 A What do you mean, "professional

1 relationship"?

2 Q Was she their attorney?

3 A She is an attorney and she may have
4 represented them from time to time.

5 Q To your knowledge, was she representing
6 them on anything in July of 1993?

7 A I don't know. One way or another, I don't
8 know.

9 Q From January 1993 until July 1993, did you
10 have occasion to consult with or work with
11 Ms. Thomases on any officially related matters?

12 A I talked to Mrs. Thomases from January to
13 July 1993. She was sort of an outside advisor to the
14 President and the First Lady.

15 Q On what kinds of subjects?

16 A On political matters, just generally. She
17 was like an outside advisor.

18 Q What kinds of things did you talk to her
19 about between January 20th and July 20, 1993?

20 A Current press reports or political issues
21 that had arisen or various public crises that were
22 taking place. She was someone that the Clintons

1 looked to for advice and judgment as an outside
2 advisor. They looked to her. They looked to other
3 people on the outside and inside as was traditional
4 for First Ladies and Presidents and other people.

5 Q Was she involved at all in the President
6 and First Lady's personal finances with Mr. Foster
7 before July 20th?

8 A I don't know. She was deeply involved in
9 the campaign. She may have been.

10 Q Did she relay messages or communications
11 between the President or the First Lady and yourself?

12 A No, she didn't relay messages between the
13 President and First Lady and myself.

14 Q Is there anything in particular -- any
15 particular matter of a public issue or nature that
16 you remember dealing with her on or discussing with
17 her before July 20, 1993?

18 A Not at this time, but we had a lot of
19 conversations in that six-month period, so I don't
20 remember any particular thing at this moment.

21 Q After you were in the chief of staff's
22 office at the White House on July 20th that night,

62

1 where did you go?

2 A I left the White House and I went home.

3 Q Did you call anybody from home?

4 A I may have tried to continue some of my
5 phone calls, people I couldn't reach. For example, I
6 have this memory, from my apartment trying to call my
7 secretary, one of my secretaries, Betsy Pond, and I
8 didn't reach her. I got her machine and jingling
9 noise on the machine, and I think that was from my
10 apartment rather than the White House.

11 So I think I just tried to continue making
12 phone calls because I didn't reach a number of people
13 and then I finally talked to my wife, and we went to
14 sleep.

15 Q Is there anybody you remember talking to
16 from home?

17 A No, I don't remember talking to anybody
18 from home. It's possible I did, but I don't
19 remember. I might have reached somebody.

20 Q Did you receive any calls while you were
21 home?

22 A No.

1 Q Did you talk to Maggie Williams after she
2 left --

3 MR. PEDOWITZ: Mike, what was the time
4 frame of that question, "did you receive any calls"?

5 MR. CHERTOFF: During the period of time
6 when he left the White House on the 20th through the
7 early hours of the 21st until you went to sleep.

8 THE WITNESS: I don't remember. It is
9 possible that a staff member who I left a message for
10 called me back at home. It's possible. I don't
11 remember it happening, but that's possible. I don't
12 remember any other calls.

13 BY MR. CHERTOFF:

14 Q Still directing your attention to the
15 period after you left the White House on the 20th
16 late at night until you went to sleep early in the
17 hours the next morning, did you talk to Maggie
18 Williams again?

19 A No.

20 Q Did you talk to Patsy Thomasson again?

21 A No.

22 Q When did you get to the White House the

1 next morning?

2 A About 8:00, a little later than I normally
3 get in.

4 Q At the time you got to the White House, did
5 you go directly up to the White House counsel's
6 suite?

7 A I think so.

8 Q Was Mr. Neuwirth there?

9 A I think so. I know Betsy Pond was there.
10 I think Neuwirth was there also.

11 Q Was Mr. Foster's door opened or closed?

12 A I think it was closed.

13 Q At that point, to your knowledge, it was
14 not locked; right?

15 A It cannot be locked because it had no lock
16 on it.

17 Q There was nothing securing the door shut;
18 right?

19 A No, there was no lock on the door.

20 Q And the suite was open because Betsy Pond
21 was in there?

22 A Yes.

1 Q Did you have any conversations with Betsy
2 Pond about the fact that she had been in Mr. Foster's
3 office?

4 A Yes.

5 Q What was the conversation?

6 A She told me -- she was extremely
7 distraught, full of grief. She said she had been in
8 Vince's office to straighten out the papers to make
9 it look neat. I said why did you go in to do that?
10 She said because she knows people will want to come
11 and see it and she wants it to be neat. I said
12 Betsy, don't go into Vince's office, stay out of
13 Vince's office.

14 Q Why did you say that?

15 A I just didn't want people going into
16 Vince's office.

17 Q Why?

18 A Because I didn't want people disturbing
19 Vince's office. Nobody -- I thought it was -- I
20 didn't want people -- I didn't want his privacy
21 invaded. That's why I didn't want people to go into
22 his office.

1 Q Well, was that a feeling you had the night
2 before when you saw Ms. Thomasson and Ms. Williams in
3 there?

4 A Yes, and that's why I said what are you
5 doing here? And they said what they said, I'm
6 looking for a note, and it occurred to me because on
7 the way over I also thought I was going to look for a
8 note, that made sense, so I said fine, we'll look for
9 a note, and we looked for a note.

10 Q By the way, on the night of the 20th when
11 you asked Ms. Williams and Ms. Thomasson in
12 Mr. Foster's office why they were there, did they
13 indicate that anybody had asked them to look for a
14 note?

15 A I have no recollection of them saying
16 anything like that.

17 Q Did they indicate that they had spoken to
18 anybody that night about going to look for a note?

19 A I don't believe so.

20 Q Directing your attention back to the
21 21st --

22 A They may have. I just don't remember. I'm

1 not categorically denying that they may have said
2 somebody told us to come look for a note. I just
3 don't remember.

4 Q Going back to the conversation on the 21st
5 when you had your conversation with Ms. Pond, did you
6 ask her what she had handled or touched or been
7 looking at?

8 A She just said she straightened up the
9 papers in his office or on his desk. That's the
10 extent of the conversation about the papers, what she
11 did.

12 Q Did you leave her an instruction to make
13 sure no one else went into the office?

14 A I may have. I may have. I don't remember
15 that precisely, but I may have when she told me that.

16 Q Do you know an individual named Craig
17 Livingstone?

18 A Yes.

19 Q Did you see him on that morning?

20 A I have no recollection of seeing him that
21 morning. I don't believe so.

22 Q Did you talk to him that morning?

1 A I don't remember talking to him that
2 morning.

3 Q Do you know whether he was carrying any
4 boxes that morning?

5 A No, I don't know if he was carrying any
6 boxes that morning.

7 Q Did there come a point shortly after you
8 arrived that you had a meeting with members of your
9 legal staff?

10 A Yes.

11 Q What was the subject of the meeting?

12 A We have a traditional meeting at 9:00 each
13 morning; the counsel's staff when I was counsel would
14 meet, at least the senior members, but a lot of the
15 staff, more than just the senior members, would meet
16 to discuss the events of the day. And I believe,
17 although that's a difficult day also, we had such a
18 meeting that morning as well, which a number of
19 people showed up. Not everybody was always there,
20 but we had that meeting and obviously what we talked
21 about there was Vince's death.

22 Q Now, was there discussion in that meeting

1 about whether Mr. Foster's office should be secured
2 in some way?

3 A I don't remember if there was discussion of
4 that meeting, but I do remember a discussion with two
5 people who were at that meeting. I think after the
6 meeting was over -- I don't really think we had a
7 meeting in the classic sense that you normally have
8 counsel's office meeting. We had a mini wake in
9 which we consoled each other and people started
10 drifting out and I recall a conversation with two
11 members of my staff.

12 Q Which two members were those?

13 A Cliff Sloan and Steve Neuwirth.

14 Q What was the conversation?

15 A We discussed whether or not we should
16 secure Foster's office in some fashion. I don't
17 remember who raised it. I may have raised it or one
18 of them may have raised that issue.

19 Q What was the discussion?

20 A Whether it was necessary or wise to do so
21 and we discussed that issue, and we concluded at the
22 end of the discussion, yes, it's probably best that

70

1 we do so, so we proceeded to call the Secret Service.

2 Q What was the reason that you concluded it
3 was best to do so?

4 A That there would be investigations
5 obviously with respect to Vince's death. And under
6 those circumstances, it would be best to make sure
7 that the office was secure in connection with those
8 investigations.

9 Q Can you explain a little bit more fully
10 why, what your thinking was?

11 A I'm thinking -- I can't really explain any
12 more why. It's partly this privacy notion, too. I
13 just didn't want people walking in and out of Vince's
14 office. I didn't want that to become a scene, and
15 it's the same kind of reaction I had when Betsy Pond
16 told me she walked in the office. And we thought --
17 I just -- I don't want people walking into Vince's
18 office because it was an invasion of his privacy, and
19 also there would be investigations, and I was sure
20 somebody would want to look there for a note.

21 I had been there the night before but we
22 did a cursory search and we were all so distraught,

1 so I just felt -- the three of us concluded that the
2 office should be secure.

3 Q So you assumed that there would be an
4 investigation; correct?

5 A Oh, yeah, I assumed there would be an
6 investigation.

7 Q And you understood it would be important to
8 have the office secure so that the investigators
9 could examine things in the office that might bear
10 upon how he died?

11 A No, that the office -- they could look in
12 the office to see if there was a suicide note or an
13 extortion note or similar document which might
14 explain why he did it.

15 Q You understood at that point, because
16 Mr. Foster was a senior official at the White House,
17 that if he committed suicide, there would need to be
18 some investigation to see if he was being blackmailed
19 or some potential compromise of security?

20 A Yes.

21 Q Did you also have discussion with Mr. Sloan
22 and Mr. Neuwirth at this point in time about which

1 agency should be brought in to conduct the
2 investigation?

3 A I don't remember having a conversation with
4 them at that time. It's possible I did. I don't
5 remember. I remember thinking about that subject
6 that day, or at least within a matter of hours, and
7 concluding that we should ask the Justice Department
8 to coordinate the various investigations. I remember
9 thinking about that after being briefed by the Park
10 Police.

11 Q So as of the point of this initial meeting,
12 did you have any understanding which agencies would
13 be involved in conducting an investigation?

14 A At some point during that day, I had an
15 understanding of which agencies would be involved.

16 Q Are you familiar with a controversy that
17 had arisen concerning the White House travel office
18 before July 20th?

19 A Yes.

20 Q And was an element of that controversy the
21 fact that the Federal Bureau of Investigation had
22 been brought in to do some investigation of the

1 travel office?

2 A Yes.

3 Q What's your recollection of that?

4 MR. PEDOWITZ: Recollection of what?

5 MR. CHERTOFF: The controversy.

6 BY MR. CHERTOFF:

7 Q What was the issue that was being raised in
8 the press concerning the FBI's participation?

9 A Calling the FBI in to investigate possible
10 malfeasance in the travel office.

11 Q Was the issue there that someone from the
12 White House counsel's office had directly called
13 someone in the FBI and asked them to come over?

14 A That is correct. That was one issue, yes.

15 Q And that was Mr. Kennedy who had made the
16 call?

17 A Yes.

18 Q Do you remember who he called?

19 A He called some FBI agent that he had been
20 working with with respect to security or various
21 other things.

22 Q And he asked that person to come over and

74

1 do some interviews or do some investigation?

2 A Well, I don't want to mischaracterize it --
3 actually he called to ask the FBI for advice as to
4 how to proceed with respect to the travel office
5 matter, that we had certain indications that
6 everything was not correct in the travel office and
7 how should we proceed. That's what I think his
8 original request -- as you know, there have been a
9 number of reports and studies, and it's all laid out
10 there, everybody's version of what they said to whom
11 and what.

12 Q In terms of your state of mind as of July
13 20, you understood there was a controversy or
14 criticism about the way in which the White House
15 counsel's office had dealt with the FBI in the
16 so-called travel office matter?

17 A Yes.

18 Q And as of July 20th, was it your
19 understanding that there had been any kind of public
20 statements by the White House indicating that greater
21 care would take place in the future in terms of
22 dealing with law enforcement agencies?

1 A There was a statement to that effect; not
2 in those words, but to that effect.

3 Q What's your recollection of the statement?

4 A The statement was that if the White House
5 was to call the FBI into a matter, it would be done
6 through the higher echelons of the Justice
7 Department, the Attorney General or Deputy Attorney
8 General or some other senior official.

9 Q Did you yourself have any conversations
10 with anybody at the Department of Justice concerning
11 arranging a manner in which future contacts between
12 the White House and investigative agencies would be
13 carried out?

14 A Yes.

15 Q With whom?

16 A The Attorney General.

17 Q And do you remember when that was?

18 A It was during the travel office imbroglio.

19 Q So it was before July 20?

20 A It was before July 20.

21 Q What was the conversation?

22 A That we agreed that in the future, if the

1 White House wished to request the FBI to advise or
2 investigate with respect to a matter, it would be
3 done through the higher echelons of the Justice
4 Department.

5 Q That means that you or someone higher up in
6 your office would contact the Attorney General or the
7 deputy?

8 A I don't remember the list of officials, but
9 there was a list, yes.

10 Q Did the Attorney General indicate to you in
11 that conversation what her view was on this issue of
12 how contacts should be handled between the Justice
13 Department and the White House on these matters?

14 A She thought it was a good idea to have it
15 done through the higher echelons of the Justice
16 Department.

17 Q And what was her reason that she expressed
18 for that?

19 A That we could avoid the kind of criticisms
20 that the press was making with respect to a direct
21 contact between the White House and the FBI.

22 Q Were the criticisms that you were

1 discussing with the Attorney General those that
2 suggested that the FBI was being -- might be
3 pressured to do something?

4 A That's what the press was saying, that --
5 making charges that the FBI was contacted directly by
6 the White House is subject or was subject to
7 pressure.

8 Q Your understanding with the Attorney
9 General was that by having the point of contact be at
10 a high level of the Justice Department, that would
11 insulate the line -- attorneys and line agents from
12 pressure; correct?

13 A No.

14 Q Was it your understanding with her that it
15 would create the appearance of insulation between the
16 White House and the line prosecutors or line agents?

17 A Yes.

18 Q And you understood that that appearance,
19 the appearance of propriety, was an important
20 function and important element for the way the
21 Department of Justice discharges its responsibility?

22 A Yes.

1 Q Do you know who Bob Barnett -- on July
2 20th, did you know Bob Barnett at Williams &
3 Connolly?

4 A Yes.

5 Q How did you know him?

6 A I met him through my role as White House
7 counsel. He was one of the outside lawyers that the
8 Clintons consulted from time to time with respect to
9 personal matters.

10 Q And how did you interact with him as White
11 House counsel in terms of his being counsel to the
12 Clintons on personal matters?

13 A He worked more with Vince with regard to
14 those personal/official things that Vince was doing.
15 Vince interacted with him more, and I knew that
16 because Vince would keep me informed as to what he
17 was doing.

18 Q And what did Mr. Foster tell you, in
19 general terms, about what he was doing with
20 Mr. Barnett?

21 A I don't know what they were functioning. I
22 just don't remember at this point. It was stuff in

1 connection with Vince's duties but also had a
2 personal aspect. And he would contact -- he would be
3 in touch with Barnett with respect to that at the
4 request of the Clintons.

5 Q On the 21st -- let me withdraw the
6 question.

7 Do you remember seeing Mr. Barnett at the
8 White House counsel's office before the 20th of July
9 1993?

10 A Before the 20th of July?

11 Q Yes.

12 A Probably. He probably met with me, too,
13 but I believe I saw him in connection with meetings
14 with Vince.

15 Q In meetings you had with him, do you
16 remember what the subject was?

17 A No, at this time I don't.

18 Q Did he consult with you or did you contact
19 him -- let me withdraw the question.

20 Did you have any discussion with him on the
21 21st concerning Vincent Foster?

22 A On the 21st?

1 Q Yes, that's the Wednesday after
2 Mr. Foster's body was discovered.

3 A I have no recollection of talking to him on
4 the 21st. It's possible, but I have no recollection.

5 Q At around 10:15 in the morning after you've
6 had your discussion with Mr. Sloan and Mr. Neuwirth,
7 was a guard posted at the door to Mr. Foster's
8 office?

9 A Yes.

10 Q And that was a Secret Service agent?

11 A Yes.

12 Q With a log?

13 A I think so. I'm not positive of that, but
14 yes, I would assume he would note who went in and
15 went out.

16 Q Who arranged for that?

17 A I probably -- my best memory is after we
18 decided to do it, I said to one of them, Neuwirth or
19 Sloan, please get it done.

20 Q Earlier that morning, you, by the way,
21 attended a senior staff meeting?

22 A That was the normal practice, but I'm not

1 sure -- that was the normal practice, but I think I
2 arrived at the White House later that morning.
3 Senior staff meeting started at 7:30 normally, and I
4 arrived at the White House after 7:30 because I had
5 been up very late the night before, so I may have
6 missed the senior staff meeting that day. I don't
7 remember being there. At times I did miss the senior
8 staff meetings.

9 Q In the morning period -- let me withdraw
10 the question.

11 Did there come a point around 11:00 on the
12 21st that you attended a Park Police briefing?

13 A Yes.

14 Q Where did that take place?

15 A In David Watkins's office.

16 Q Who set it up?

17 A I don't know.

18 Q How did you come to learn about it?

19 A Somebody told me.

20 Q Who was there?

21 A I'm not sure I will list everybody who was
22 there. I remember people obviously from the Park

1 Police being there. I don't remember their names at
2 this point. I remember Watkins being there. It was
3 his office. I was there. Bill Kennedy was there
4 because he asked me to attend it when I told him I
5 was attending it, and I said okay, come along because
6 he was so close to Vince obviously.

7 Stephanopoulos was there. I remember him
8 being there. I believe Web Hubbell was there. I
9 have a vague memory of Web Hubbell being there, and
10 there may have been others. We sort of packed into a
11 room. There may have been others that I just don't
12 remember at this moment. Maybe Gergen was there. I
13 don't remember. It's logical, but I don't remember.

14 Q What was the purpose of the briefing?

15 A To tell us what they found the night
16 before, the day before.

17 Q As of that point in time, had anybody
18 indicated to you that you would be the principal
19 White House person in terms of dealing with contacts
20 with the investigating agents or law enforcement on
21 this matter?

22 A No.

1 Q Did there come a point afterwards that you
2 were told or you understood that you would be the
3 principal point of contact in dealing with the
4 agencies or law enforcement people on this matter?

5 A I don't remember if I was told later on.
6 It was, I believe, part of my function to do that,
7 and I did it to some extent.

8 Q On the 21st, did you have an understanding
9 that there was anybody you ought to be consulting
10 with in terms of deciding how to deal with the
11 agencies or the law enforcement personnel?

12 A No.

13 Q Your understanding is that it was committed
14 to your discretion?

15 A My understanding was it was part of my
16 function as White House counsel.

17 Q At the time you went down to the Park
18 Police briefing, did you understand the Park Police
19 were going to be conducting an investigation?

20 A No.

21 Q You learned that when you were at the Park
22 Police briefing?

1 A Yes.

2 Q What do you remember from the briefing?

3 A All I remember from the briefing is they
4 told us how they were called in and what they saw at
5 Fort Marcy, where they found Vince and what the body
6 looked like, where his car was, that kind of
7 description. And it was virtually certain this was a
8 case of suicide, and that's all I remember.

9 Q Was there a discussion about the, by the
10 Park Police about the need to get into Mr. Foster's
11 office?

12 A At some point there was. At that briefing,
13 which was quite or shortly thereafter, as the
14 briefing broke up or I met with them later, but at
15 some point, they said yes -- there was no suicide
16 note found at the scene, and they said we want to
17 check in Foster's office to see if there's a suicide
18 note.

19 Q Did you indicate at that point that you had
20 been in his office the previous evening and people
21 had been looking for a suicide note?

22 A I don't remember. I don't remember one way

1 or the other. I may have. I may not have. The
2 problem is I knew that my search was cursory. We
3 didn't really look on every level, every spot. I was
4 confident there was nothing easily in public view
5 that he left sticking on top of a desk, but it was
6 cursory. I don't remember whether I told them when I
7 was in there or not.

8 Q As of this point in time, as of this
9 briefing, had you made a decision to bring the
10 Department of Justice into this?

11 A Shortly thereafter. My best memory is
12 shortly thereafter, I made a decision to ask the
13 Department of Justice to coordinate various
14 investigations.

15 Q And when was that?

16 A It was sometime that morning.

17 Q What caused that decision?

18 A What caused it is that I realized that the
19 Park Police were going to conduct an investigation,
20 which made perfect sense, if that's what they wanted
21 to do; that the Secret Service, which was probably
22 also present at this briefing, which is sort of

1 ubiquitous in the White House, may also conduct an
2 investigation. Then I thought maybe the Department
3 of Justice would conduct an investigation, and I saw
4 the potentiality for multiple investigations and
5 multiple requests for interviews and documents.

6 And when that struck me, which it did
7 sometime that morning. I said you know, I should ask
8 the Department of Justice not to conduct the
9 investigation. I'm not telling anybody what to
10 conduct or not to conduct, but to coordinate with
11 their investigations. So if people are interviewed
12 by law enforcement agents, they could all be there at
13 once. If documents are requested or anything is
14 appropriate, all the requests could be made at once,
15 and that's when I made the determination to call the
16 Department of Justice, and that's why I made the
17 determination to do it.

18 Q Who did you call?

19 A I believed I called -- it was either Janet
20 Reno or Phil Heymann, and I think it was Phil
21 Heymann. I have no great memory of that call, but if
22 I had to guess between the two, it's probably Phil

1 Heymann.

2 Q And what was the conversation?

3 A Vince is dead. There's going to be
4 obviously some investigations in connection with
5 that. I don't want -- I really think it's more
6 efficient for law enforcement, as well as the White
7 House, not to do multiple investigations. Would you,
8 the Justice Department, undertake a coordinating
9 role.

10 Q And whoever you spoke to was agreeable to
11 that?

12 A Yes -- well, maybe they said they would
13 think about it, but they were not -- shortly
14 thereafter they said yes, they think it would be
15 something they would do.

16 Q You got a call back shortly thereafter?

17 A I don't know. It may have been agreeable
18 in the conversation. I don't remember. I don't
19 remember the conversation particularly. I just
20 remember receiving a positive response quickly.

21 Q Was there discussion about bringing the FBI
22 into it at that point?

1 A I don't remember any such discussion.

2 Q Was it your understanding that if the
3 Department of Justice got involved, they would, as a
4 matter of course, get the FBI involved as well?

5 A Perhaps. If they did an investigation,
6 they would get the FBI involved. For a coordinating
7 function, they may get other people involved. I
8 didn't know.

9 Q Is there anything else you recall about the
10 conversation with either Ms. Reno or Mr. Nussbaum at
11 this point --

12 A Mr. Heymann.

13 Q I'm sorry, Mr. Heymann or Ms. Reno at this
14 point concerning what you were requesting?

15 A No.

16 Q Did there come a point, also in the
17 morning, that the President was in the White House
18 counsel's office?

19 A Yes.

20 Q And what did he do there?

21 A He arrived to comfort the people who worked
22 in the White House counsel's office.

1 Q Did he have a private conversation with
2 you?

3 A I don't recall having a private
4 conversation. He came in -- either he came in or I
5 walked up with him from the Oval Office. Maybe we
6 walked in together. Maybe I was there when he walked
7 in. I don't remember that for sure.

8 Q Did he take you aside into your office?

9 A He came into my office, and then other
10 people joined us in the office, and the purpose was
11 to comfort people, including maybe to comfort me, but
12 that's what the meeting -- that's what the gathering
13 was about.

14 Q Was there any discussion other than words
15 of comfort?

16 A We talked about Vince. One of the things I
17 did when we were talking about Vince was to walk into
18 Vince's office -- the Secret Service agent was
19 standing outside -- to remove a picture of Vince, of
20 Mrs. Mary's kindergarten class in Hope, Arkansas in
21 the early 1950s which contains a picture of a
22 five-year-old Vince Foster and a five-year-old Bill

90

1 Clinton, take it back into my office with the
2 President standing there, showing the President the
3 picture in the presence of these other people as the
4 President talked about Vince.

5 I remember that happening, but the
6 conversation was just what a tragedy this was. What
7 a wonderful person he was and what a great tragedy
8 we've all suffered.

9 Q Was there anybody else who entered -- up
10 until this point in time, was there anyone else who
11 entered Mr. Foster's office since the Secret Service
12 agent had been posted outside there?

13 A I had no knowledge of anybody else in
14 there.

15 Q Had you been in there for any other reason?

16 A No.

17 Q During the morning or the afternoon, did
18 you go in to get any document that had to be signed
19 that was time sensitive?

20 A I don't know. I don't remember right now.
21 It's possible because the blind trust, something had
22 to be signed by the end of the month or something

1 like that. It was virtually complete. I mean, that
2 stuff was almost all --

3 Q Was there a discussion about that blind
4 trust being a time sensitive document on the 21st?

5 A At some point there was a discussion about
6 that, but I don't remember whether it occurred on the
7 21st.

8 Q Now, after the Park Police briefing, did
9 you have occasion to walk to another part of the
10 White House and run into some Park Police who were
11 waiting there?

12 A Yes.

13 Q How long after the Park Police briefing was
14 that encounter?

15 A I don't remember how long. It was sometime
16 after. I just don't remember.

17 Q Did you go down there because you had been
18 told they were waiting there?

19 A Either that or I ran into them. But I knew
20 at some point, I became aware that they were waiting
21 to talk to me and see me.

22 Q Were you with somebody?

1 A I could have been.

2 Q Were you with Maggie Williams?

3 A I don't remember being with Maggie
4 Williams.

5 Q Was there any reason at that point in time
6 that you were consulting with Maggie Williams
7 concerning dealings with the Park Police or the
8 documents in Vincent Foster's office?

9 A No, I don't believe I was consulting with
10 Maggie Williams at that time. On the other hand, I
11 could have run into Maggie Williams. The west wing
12 is a very small place, fairly intimate place so you
13 run into people all the time. But I don't remember
14 any discussions along the lines that you've just
15 described.

16 Q What was the conversation you had with the
17 Park Police at this point?

18 A Well, they said -- because I knew they were
19 going to say, from the briefing which was conducted
20 by others, that they wanted to interview the people
21 who knew Foster in the White House and certainly in
22 the counsel's office, and they wanted to look at

1 Foster's office for a suicide note or extortion note,
2 some other such document.

3 Q And what did you say?

4 A I said -- and that's when I was recognizing
5 the possibility of multiple investigations, and I
6 wanted to get the Justice Department involved to
7 coordinate. And I wanted to have that call -- or
8 maybe I already had it. I don't recall the precise
9 chronology. And I said look -- I said something to
10 the effect that I want to do this all at once. I
11 want to get the Justice Department involved to
12 coordinate, if they'll agree to coordinate, so
13 let's -- we have to wait on them.

14 In any event, I have a number of things I
15 must do that day, so let's -- you know, you'll have
16 to wait until I consider, discuss with you the
17 procedures to follow with respect to interviews that
18 you're requesting and other things that you're
19 requesting. And that's the conversation I had with
20 them, and they sat -- they then sat in the White
21 House.

22 Q What was their response to what you told

1 them?

2 A They understood.

3 Q Were they -- did they seem annoyed?

4 A No, they didn't seem annoyed.

5 Q Do you know at what point the FBI came on
6 to the scene?

7 A Sometime after I spoke to -- I guess it was
8 Heymann.

9 Q When did you learn they were arriving?

10 A I don't remember. Sometime that day. I
11 believe I learned they were arriving together with
12 other representatives of the Justice Department.

13 Q Were you surprised the FBI was coming?

14 A No.

15 Q After your meeting with the Park Police
16 where they were told you would have to wait until the
17 other law enforcement people could coordinate things,
18 did you have any discussions with anybody, from that
19 point on until representatives of the Department of
20 Justice actually physically arrived, concerning the
21 Foster documents? Do you follow me?

22 A No, I follow you. Not that I recall.

1 Q Did you make any more calls to the
2 Department of Justice?

3 A Not that I recall.

4 Q Did you talk to Webster Hubbell about it?

5 A He may have been at that briefing, but I
6 don't remember speaking to him about that subject.

7 Q On the 21st, was it your understanding that
8 Mr. Hubbell would be involved in any Department of
9 Justice activities in connection with this
10 investigation?

11 A No, that wasn't my understanding. I dealt
12 with Heymann. This wasn't in Hubbell's area.

13 Q Was it your understanding on the 21st that
14 Hubbell was going to be recused or asked not to be
15 involved in anything to do with the investigation?

16 A I don't recall that circumstance. I don't
17 recall because this is Heymann's area. The criminal
18 division, the FBI reported to Heymann, these kind of
19 investigations. So Hubbell would normally have no
20 role in this thing. That's why I don't recall any of
21 the discussion about recusal or anything like that.

22 Q Was there any point later in time, either

1 on the 21st or later, at any point, that you learned
2 that Mr. Hubbell had been asked to keep himself out
3 of anything to do with this investigation?

4 A I have a vague recollection of that, but I
5 don't know where it comes from or who told me. I
6 have a vague recollection of it. I don't know. It
7 may have happened.

8 Q Do you have any sense when you might have
9 learned that?

10 A No, I don't have any sense of when I might
11 have learned it.

12 Q Were you involved in a press conference, or
13 were you present at a press conference that was held
14 by Gearan and McLarty in the afternoon of the 21st?

15 A No, I was not. I was very busy that day,
16 but I wasn't -- I don't believe I was involved in
17 that press conference.

18 Q Were you present?

19 A I don't think so.

20 Q Were you aware it was happening?

21 A I think so.

22 Q Did they discuss any aspect of what they

1 were going to talk about with you before the press
2 conference began?

3 A I don't remember discussing that with
4 them. What I do remember is making a speech with
5 McLarty and the President that afternoon. I remember
6 that happening.

7 Q That was to the staff?

8 A And I remember us waiting -- the President
9 and I waiting for McLarty to go make that speech.
10 That I remember.

11 Q To whom was that speech?

12 A To the White House staff, the entire White
13 House staff.

14 Q And directing your attention back to the
15 press conference, did you know that at the press
16 conference there was discussion about the fact that
17 the Department of Justice would be coordinating the
18 investigation?

19 A I don't know if there was or wasn't such a
20 discussion.

21 Q Did you communicate that, that the
22 Department of Justice was going to be coordinating

1 the investigation, to anybody who was connected with
2 the press operation in anticipation of the press
3 conference?

4 A Right now I have no memory of doing that,
5 but it's quite likely that I would do something like
6 that. But if you ask me do I remember it now, no.
7 If you ask me is it likely I would have done it, the
8 answer is yes.

9 Q What's the next thing you recall on that
10 day that you were involved in in connection with
11 Mr. Foster's office and the handling of whatever was
12 within it?

13 A With respect to that subject, the next
14 thing I recall is meeting on the afternoon of July 21
15 with representatives of the law enforcement agencies.

16 Q Now, where did you meet those people
17 initially?

18 A I believe we met in my office.

19 Q Did they come up to the office directly, or
20 did you go and fetch them from somewhere?

21 A Someone would have fetched them.

22 Q And who was present -- let's be clear.

1 Who was present in the suite during this --
2 when this meeting began?

3 A I don't remember with great precision.
4 What I remember is this: I was present in this
5 meeting. I'm fairly certain that Sloan was present
6 and Neuwirth was present. I remember Dave Margolis
7 being there. I remember -- I believe Roger Adams was
8 there. I'm sure -- I know, I remember
9 representatives of the Park Police being there. I
10 don't remember their names at this point. And it's
11 quite possible that an FBI agent was there and a
12 Secret Service agent was there. Secret Service
13 agents were usually the ones who escorted other law
14 enforcement people around the White House, and they
15 were present in most of these meetings or sessions.
16 That's what I remember.

17 Q Did you have a meeting initially inside
18 your office?

19 A With who?

20 Q With any of these people.

21 MR. PEDOWITZ: You mean separate from the
22 meeting he's described?

100

1 MR. CHERTOFF: Let me withdraw the
2 question.

3 BY MR. CHERTOFF:

4 Q Putting aside who was in the suite, did
5 some of these individuals come into your office for a
6 meeting?

7 A No, I'm talking -- I believe virtually all
8 of these individuals, if not all of them came into my
9 office.

10 Q When did you first learn that Mr. Margolis
11 and Mr. Adams would be coming over from the
12 Department of Justice?

13 A I don't -- sometime that day.

14 Q Had you ever met Mr. Margolis before?

15 A I don't remember. I just don't remember
16 now. I know I knew of him. He has a very good
17 reputation. He's a senior person in the Justice
18 Department, but I have no recollection of meeting him
19 before. I may have.

20 Q What about Mr. Adams, did you know anything
21 about him before you met him?

22 A No.

1 Q Was it your understanding that -- was
2 Mr. Margolis doing most of the talking on behalf of
3 the Department of Justice?

4 A Yes.

5 Q Now, initially in this meeting, the purpose
6 of the meeting was to discuss the manner in which the
7 review of the documents in Mr. Foster's office would
8 take place; correct?

9 A No.

10 Q What was the initial purpose of the
11 meeting?

12 A To discuss the investigation that would
13 occur that would be necessary to try to avoid
14 multiple requests for interviews -- actually,
15 interviews was the first thing. They wanted to talk
16 to our people, and I had a lot of distressed people
17 on my hands, and I was sort of trying to balance --
18 try and calm people down, but I understood the need
19 of the law enforcement to talk to these people. So
20 we discussed interviews.

21 Q Who did most of the talking for the
22 Department of Justice?

1 A Margolis. He did most of the discussion
2 for virtually everybody. The Park Police did chat
3 and talk. Not everybody sat silent but Margolis was
4 the primary spokesman for the law enforcement people
5 there and I was the primary spokesman for the White
6 House.

7 Q What was the discussion concerning the
8 interviews?

9 A We want to talk to your people as soon as
10 we can to see what they can tell us about his last
11 hours, give us a clue as to why he killed himself. I
12 said I perfectly well understand that. I have people
13 enormously distraught at this point. I suggest we do
14 this tomorrow morning. It's already late in the
15 afternoon. They said fine, we'll do it tomorrow
16 morning.

17 Q Did you indicate in this conversation that
18 in the intervening period of time until the next
19 morning, members of the White House counsel's staff
20 would be talking to the other witnesses or potential
21 witnesses?

22 A I remember -- I don't remember whether I

1 said that or not.

2 Q Do you remember whether they had any
3 reaction to that?

4 A I certainly saw nothing negative.

5 Q Did you say one of the reasons you wanted
6 to delay was to give them an opportunity to consult
7 with the lawyers?

8 A I don't recall saying that. I don't recall
9 saying that.

10 Q It's possible?

11 A No, I don't even think that's possible. I
12 mean, I intended to have lawyers prepare people to be
13 interviewed. It's traditional in my world, and
14 appropriate.

15 Q Which lawyers would prepare the people to
16 be interviewed?

17 A The lawyers in my office, preparing my
18 staff members to be interviewed.

19 Q Weren't the lawyers in your office
20 themselves going to be interviewed?

21 A Yes.

22 Q Is it customary in your world to have

1 lawyers who are themselves going to be witnesses
2 preparing other potential witnesses for interviews?

3 A In this kind of situation, yes, because
4 this was not -- this was an investigation of a
5 suicide. They just wanted any indication from the
6 people in my office about Vince's final hours and
7 things like that. I didn't look upon this as a major
8 criminal investigation in which people were witnesses
9 themselves. I think under these circumstances, it
10 was customary for people in the office who may
11 themselves be interviewed to prepare other people.

12 If Steve Neuwirth is going to be
13 interviewed, I don't think there's anything improper
14 or wrong about him preparing or helping his secretary
15 with her interview.

16 Q Did you have lawyers prepare the other
17 lawyers? Was it your intention to have the lawyers
18 prepare the other lawyers?

19 A I don't remember. I don't think the
20 lawyers really required -- I don't think Sloan -- I
21 wasn't prepared. I didn't have somebody prepare
22 Sloan or somebody prepare Neuwirth. I was really

1 thinking of having the secretaries and other people
2 like that, the nonlegal people prepared -- not
3 prepared, just calmed down. Just get them -- calm
4 them down. I looked at the lawyers to calm the staff
5 down. That was really the preparation.

6 Q But what you said initially in your world,
7 it's customary to have lawyers prepare people for
8 interviews, was it your understanding the interviews
9 here were going to be the type of interviews that you
10 typically have to prepare witnesses for in your prior
11 experience?

12 A In my prior experience, fact-gathering is
13 fostered by having lawyers sit down and calm people
14 down and prepare them for interviews.

15 Q You don't have prior experiences dealing
16 with investigations of suicides prior to July 20th;
17 right?

18 A No. I've been involved in situations
19 involving other suicides. Not a lot. I had a client
20 who committed suicide once, a corporate client and
21 there was an investigation of that suicide.

22 Q Is it fair to say that when you talk about

1 your prior experience and you say it fosters
2 fact-gathering to have the lawyers preparing the
3 witnesses, that you're talking mostly in the context
4 of fact-gathering for a criminal investigation or for
5 some kind of civil deposition or proceeding where
6 there are potential adversaries?

7 A I'm talking in general.

8 Q In cases where there's interviews by law
9 enforcement, it's been your habit and practice to
10 have witnesses that you represent well prepared;
11 right?

12 A Yes.

13 Q And is that in order to foster the
14 fact-gathering on the part of the law enforcement
15 people or in order to protect the witness and the
16 witness's interest?

17 A Both. I think -- you may disagree, but I
18 believe that a lawyer preparing a witness will both
19 protect a witness and the witness's interest and
20 foster the gathering of accurate facts.

21 Q But you'll also agree with me at least in
22 the area of criminal representation, there are times

1 when it's not in the interest of the witness to
2 foster the gathering of facts?

3 A That's true at times, in criminal
4 investigations. I did not consider this a criminal
5 investigation. I didn't consider this an adversary
6 proceeding.

7 Q As the conversation then continued after
8 the interviews, what was the next topic that came up?

9 A The next topic I remember was a desire to
10 look at Vince's office -- to search Vince's office to
11 see if there was a suicide note or extortion note or
12 something like that.

13 Q And is it fair to say what they
14 indicated -- the law enforcement people indicated is
15 they wanted to look at the office and see if they
16 could determine a reason that he committed suicide?

17 A No.

18 Q They said what, then?

19 A We want to look for a suicide note or
20 extortion note or some other such document.

21 Q They used the term "some other such
22 document"?

1 A Something like that. The discussion was a
2 suicide note or extortion note. It was focusing on a
3 suicide note. Extortion note was a possibility
4 certainly but it was really -- or some other such
5 document. I mean, I don't want to say they just
6 limited it to that.

7 Q When you say "some other such document,"
8 you mean a document that might reflect what the
9 motivation to commit suicide was; right?

10 A To reflect what he wrote down as to why he
11 was committing suicide.

12 Q Did they restrict it to things in his own
13 handwriting?

14 A No, I don't know if they restricted
15 themselves but that was the subject of our
16 discussion.

17 Q You would agree with me, then, that you
18 certainly understood that any documents in his own
19 handwriting would be of particular interest to the
20 investigators?

21 A If they reflected his state of mind or they
22 reflected an intention to take his own life.

1 Q But by definition, then, if there was a
2 document in there in his own handwriting, that would
3 have to be looked at relatively closely to see if
4 that were relevant; right?

5 A No, we're looking for a suicide note.
6 We're looking for a suicide note. We're not looking
7 for every document in his own handwriting. We're
8 looking for a note -- we were looking for a document
9 in his handwriting that says to my wife or to my kids
10 or to the President or to Bernie. You know, I'm
11 taking my -- I'm taking my life because I can't live
12 anymore for whatever -- that's what we're looking
13 for.

14 Q Is that what they restricted themselves to,
15 Mr. Nussbaum?

16 A They were looking for a suicide note or an
17 extortion note, or somebody leaving him a note
18 threatening him in some fashion. That's the kind
19 of -- yes, that's what I understood the search was
20 for.

21 Q But they didn't say they wanted to limit
22 themselves to a suicide note; right?

1 A No, they didn't say solely a suicide note;
2 a suicide note or extortion note or similar such
3 document.

4 Q A similar such document would be a document
5 that would reflect state of mind and indicate why he
6 might have taken his life; correct?

7 A Yes.

8 Q And certainly a document in his own
9 handwriting would be something that you would
10 consider to be likely to be more relevant than, let's
11 say, a copy of a report published by the general
12 printing office?

13 A Yes.

14 Q And it would follow from that that you
15 would want to look more closely at things in his own
16 handwriting; correct?

17 A If it appeared to be a suicide note or
18 extortion thing -- well, in his own handwriting -- I
19 don't think he's writing himself an extortion note.
20 So I think if you're talking about suicide notes,
21 yes, if it appeared to be a suicide note. There are
22 a lot of documents in people's own handwriting in

1 their own offices.

2 Q My question was would you agree with me
3 that if documents were discovered in his office in
4 his own handwriting, those would bear a particularly
5 close look to see if they might be relevant to his
6 state of mind in terms of taking his life; correct?

7 A No. Only if they were -- a document in his
8 own handwriting which concerned -- which didn't
9 concern matters -- which didn't come close to
10 constituting a suicide note would not be something
11 that bears close looking at. If you have a document
12 that said -- you saw a handwritten report by him
13 saying Beth Nolan and I have had discussions on
14 various ethics requirements with the White House
15 officials, it doesn't bear close scrutiny. It's not
16 a suicide note if he's writing it for Beth Nolan, a
17 draft or report.

18 On the other hand, something that was
19 eventually found on July 26th, yes, that clearly
20 bears close scrutiny with respect to this issue.

21 Q But you would have to read things in his
22 own handwriting in order to know whether they would

1 reflect -- at least read a significant portion in
2 order to know whether they would reflect something in
3 his state of mind; right?

4 A You would have to look at them. You'd have
5 to glance at them to determine whether they fall into
6 this category of something akin to a suicide note.
7 You wouldn't have to read them carefully or every
8 word, or anything like that.

9 Q In contrast, you would agree with me, for
10 example, a typed report that was clearly labeled as a
11 report, general printing office report or something
12 of that sort, you could look at immediately and
13 see --

14 A Some you would look at immediately but some
15 documents you would have to look at -- you could type
16 a suicide note.

17 Q Did Mr. Margolis indicate to you in this
18 meeting that, in his view, that it was not really
19 settled at that point that there was a suicide?

20 A I don't recall -- I don't recall him saying
21 that. He may have, but I don't recall -- I don't
22 deny he might have said that. I don't recall.

1 Obviously there was going to be an investigation.
2 The indication we received in the briefing that
3 morning was that it was virtually certain it was a
4 suicide, but no one said 1000 percent. And I
5 recognized that an investigation would be done.

6 MR. PEDOWITZ: Could we take a break for a
7 few minutes?

8 MR. CHERTOFF: Can I ask one more
9 question?

10 MR. PEDOWITZ: Yes.

11 BY MR. CHERTOFF:

12 Q Did Mr. Margolis indicate in this
13 conversation that, in the absence of finding a note
14 or something that would indicate that Mr. Foster had
15 taken his own life, the possibility of foul play
16 could not be excluded?

17 A I don't recall that.

18 Q One way or the other?

19 A I don't recall that one way or the other.

20 Q Did he mention at that point that there was
21 a question about the gun which Mr. Foster had used to
22 kill himself?

1 A I have no such recollection.

2 MR. CHERTOFF: Good time for a break.
3 (Recess.)

4 BY MR. CHERTOFF:

5 Q We were in the meeting on the 21st at 5:00
6 on the documents. Now, after the investigators told
7 you what they wanted and what they were looking for,
8 what discussion was there concerning when they could
9 get access to the documents?

10 A The next day.

11 Q You said the next day?

12 A I said let's do it -- it was sort of
13 connected with the interviews. Let's just do it the
14 next day. This has been a difficult day.

15 Q Did any of the investigative people
16 indicate a desire to get in that day?

17 A They may have, but it was not strongly
18 expressed, but I don't remember. It was agreed that
19 we would do it the next day.

20 Q You say was it agreed or was it a decision
21 that somebody made that it would be the next day?

22 A A consensus was reached that we would do it

1 the next day.

2 Q But it was a consensus?

3 A I think it was a consensus, yes. Obviously
4 I said -- the idea for the next day came from me.
5 I'm not saying I was anxious to really walk in and
6 they weren't. But it was a consensus, nonetheless.

7 Q And in particular, was it set for the next
8 morning?

9 A It was set for sometime the next morning,
10 yes. I think the term "morning" was used, the next
11 morning.

12 Q Was there a discussion about the manner in
13 which the documents would be examined?

14 A Yes.

15 Q What was the discussion?

16 A I said, and I was coming up one thing after
17 the other. I said look, this is a lawyer's office.
18 Foster's is a lawyer's office. There's all kinds of
19 sensitive and privileged materials in a lawyer's
20 office and especially in Foster's office. We have to
21 work out some sort -- and I know you want to seek a
22 suicide note, an extortion note or some other such

1 document, we have to work out some sort of procedure
2 whereby I could make sure that we're not violating
3 concepts of privilege or confidentiality or privacy,
4 and yet at the same time enable you to conduct --
5 enable you to satisfy yourselves as to whether or not
6 there is a suicide note in the office. And we'll
7 have to work that out in some manner, and I'm
8 thinking about that issue. And they appeared to
9 understand.

10 The way I remember, I received a somewhat
11 sympathetic response. They said yes, they understand
12 it's a lawyer's office. They understand the concerns
13 for privilege and confidentiality, maybe national
14 security material in that office, I said Vince and I
15 worked on stuff which had national security
16 implications, power stuff, things like that. So I
17 received a sympathetic response.

18 The only other thing I remember is there
19 may have been -- I have a vague memory, not a strong
20 memory -- of a discussion of maybe we can look at the
21 first page of the document or the cover of a
22 document, and I said yeah, maybe that's a possibility

1 but I have to think it through. I'm concerned about
2 waiver and things like that, so it was sort of
3 left -- that's what I remember about that discussion.

4 Q Do you have a good memory of that
5 discussion or a hazy memory?

6 A I have the memory I just expressed.

7 Q Was there an agreement that evening with
8 the Department of Justice that the lawyers from the
9 Department of Justice would look at the documents
10 first and determine, from at least an initial
11 examination of the documents, whether they were
12 privileged or not?

13 A No.

14 Q There was no such agreement?

15 A I don't believe there was any such
16 agreement, and there are other people there at this
17 meeting who can testify. You have Sloan. You have
18 Neuwirth. You have others.

19 Q Have you talked to them about it?

20 A No.

21 Q How do you know how they're going to
22 testify?

1 A You can ask their recollections.

2 Q And presumably, we can ask the
3 recollections of -- that's argumentative. I won't
4 even finish it.

5 I'm going to read you a statement. I'll
6 ask you if you agree it or disagree with it.

7 MR. BEN-VENISTE: What are you reading
8 from?

9 MR. CHERTOFF: F149.

10 THE WITNESS: What is it?

11 BY MR. CHERTOFF:

12 Q It's a memorandum prepared by a participant
13 at the meeting.

14 MR. PEDOWITZ: Can you tell us who it is?

15 MR. CHERTOFF: I can. The question is
16 whether I will, which I'm thinking about.

17 MR. PEDOWITZ: If you're going to ask the
18 witness about whether or not he agrees with a
19 statement that is made, you're telling us that it's a
20 participant at the meeting, we'd like to know who it
21 is.

22 MR. CHERTOFF: Let's say one of the Justice

1 Department lawyers.

2 MR. PEDOWITZ: Can you tell us which
3 Justice Department lawyer?

4 BY MR. CHERTOFF:

5 Q I can't tell you. I would rather not
6 because I think it divulges evidence that's someone
7 else's evidence at this point. I could reframe the
8 question by simply making the statement myself and
9 asking you whether you agree so there's not a point
10 in wasting a lot of time on it. I prefer to leave it
11 as I have.

12 "At the Wednesday meeting there was
13 agreement that the Justice Department attorneys would
14 look at each document or at least each file to
15 determine if it contained privileged material, in
16 which case it would not be examined by the Park
17 Police or the FBI."

18 Do you agree with that? Did that happen?

19 A I don't agree that there was any
20 agreement. I do believe there could have been
21 discussion. There was likely discussion about that
22 being a possible procedure.

120

1 Q Did Mr. Neuwirth say at some point, in
2 substance in trying to summarize the conversation,
3 that you would look at the documents and determine
4 whether they were privileged and if so, you would
5 turn them over to the authorities?

6 MR. PEDOWITZ: Mike, could you rephrase
7 that question and just indicate to us when Neuwirth
8 is supposed to have said that?

9 BY MR. CHERTOFF:

10 Q In this meeting that you had with law
11 enforcement authorities, did Mr. Neuwirth say in
12 substance in summarizing the discussion that his
13 understanding of the discussion was that you would
14 look -- you, Mr. Nussbaum, would look at the
15 privileged documents and make a determination about
16 whether there was a privilege and if there was not a
17 privilege, you would then show it to the law
18 enforcement authorities? Did he make that statement?

19 A I don't remember. I just don't remember.

20 Q And did you then correct him in that
21 statement and say to him no, it would be the Justice
22 Department lawyers who would make that determination?

1 A I don't believe that happened. That I
2 don't remember happening.

3 Q Meaning you believe it did not happen?

4 A I believe it did not happen because my
5 memory is we reached no conclusion. We discussed
6 various options, and among the options discussed are
7 the kinds of things that are reflected in that memo
8 that you read, but I do not believe, and my memory is
9 such, that no agreement was reached at the conclusion
10 of that meeting.

11 MR. BEN-VENISTE: Mike, I think he
12 unintentionally misinterpreted the last part of your
13 question about who may have corrected, according to
14 the writer of this memorandum.

15 MR. CHERTOFF: Let me rephrase it
16 slightly.

17 BY MR. CHERTOFF:

18 Q Did someone then correct Mr. Neuwirth and
19 did you then agree that the Justice Department people
20 would be the ones to determine privilege?

21 A I've already answered that. I have no
22 memory of that.

1 Q So my mild modification doesn't change your
2 answer?

3 A It doesn't change my answer.

4 Q So your testimony is it was not agreed with
5 the Department of Justice people as of the end of
6 that meeting on June 21st, late in the day, that they
7 would be the ones to make the initial determination
8 of privilege?

9 A That's correct.

10 Q Now, did you have a doubt about the ability
11 of the Department of Justice people to be cleared to
12 a sufficient degree to see national security
13 documents?

14 A Not ultimately, no. Ultimately, I think I
15 would have no doubt that there are people in the
16 Department of Justice who could be cleared to see
17 national security documents, but it wasn't just a
18 clearance issue.

19 Q What were the other issues?

20 A Executive privilege issues, attorney-client
21 issues. There were other issues other than
22 clearance.

1 Q Doesn't the Department of Justice itself
2 often review documents in the office of the President
3 or the executive -- or the White House generically to
4 determine whether the President ought to take a
5 position that it's subject to executive privilege?

6 A At times.

7 Q In fact, there's an office called the
8 office of legal counsel that often performs that?

9 A At times, yes.

10 Q Is it your understanding that there is an
11 executive privilege to withhold documents from
12 another executive branch agency?

13 A Yes.

14 Q You believe, within the executive branch,
15 the White House can exert executive privilege to
16 decline to turn something over to another executive
17 branch agency?

18 A Ask Mr. Ben-Veniste about that. Yes, the
19 answer is yes. I believe such a privilege exists and
20 I believe the Supreme Court also believes such a
21 privilege exists.

22 Q Do you believe there's an executive

1 privilege that applies -- did you believe there was
2 an executive privilege that applied for the President
3 to prevent the Department of Justice -- let me
4 withdraw the question and make sure we're clear.

5 I'm not talking about the President as an
6 individual, whether he has any privileges. Whether
7 the executive privilege, if the President
8 institutionally can be exerted against the Department
9 of Justice? Was that your understanding?

10 A Yes, that's my understanding, that there
11 can be circumstances in which such a privilege exists
12 against the Department of Justice by the President.

13 Q What circumstances are those, as you
14 understood it?

15 A With respect to presidential communications
16 of a nature that he doesn't want the Department of
17 Justice -- that he believes should not be disclosed
18 to the Department of Justice. I believe the
19 President has a right vis-a-vis the Department of
20 Justice to exercise that kind of privilege.

21 Q Even though the Department of Justice is
22 part of the executive branch?

1 A Even though the Justice Department is part
2 of the executive branch, that's correct.

3 Q And we're talking about something distinct
4 from the President simply ordering the Attorney
5 General not to ask for something?

6 A Yes, we are talking about something
7 distinct from that.

8 Q What other privileges were you concerned
9 about in the context of this meeting on the 21st of
10 July?

11 A The attorney-client privilege.

12 Q And this would be --

13 A Work product privilege, attorney work
14 product privilege.

15 Q When you say the attorney-client privilege,
16 who was the client whose interest you were concerned
17 about at this point?

18 A The President in his official capacity.

19 Q And the President in his official capacity
20 you view as having an attorney-client privilege
21 distinct from the executive privilege?

22 A There is such a possibility that he does,

1 yes.

2 Q Was there an attorney-client privilege
3 pertaining to the President or to the First Lady in
4 their personal capacities that you were concerned
5 about?

6 A There is such a privilege, but that was not
7 a primary concern. I believe such a privilege
8 exists.

9 Q But that wasn't present in your mind on the
10 21st?

11 MR. BEN-VENISTE: I think he said it wasn't
12 a primary concern.

13 THE WITNESS: That's what I said, it --

14 MR. CHERTOFF: I'm asking a different
15 question.

16 THE WITNESS: It wasn't a primary concern.
17 I don't remember whether it was present in my mind.
18 I was thinking more of executive privilege, more of
19 attorney-client privilege, the President in his
20 official capacity, but I recognized there were other
21 potential privileges, too, with respect to the
22 documents that might be in the office.

1 BY MR. CHERTOFF:

2 Q At that point in time on the 21st of July,
3 you understood there were personal financial
4 documents of the Clintons in Mr. Foster's office?

5 A I understood there was likely to be
6 personal documents of the Clintons' in Mr. Foster's
7 office because Mr. Foster had been working on these
8 personal/official functions. But I wasn't -- that's
9 correct, I understood that.

10 Q Was there a discussion during this meeting
11 about putting a lock on Mr. Foster's office?

12 A When did we put a lock on it? We put a
13 lock on it that day. The Secret Service was the
14 one -- I don't remember any discussion about putting
15 a lock on Mr. Foster's office. I do remember the
16 Secret Service, at the end of the day, saying to me
17 look, we're going to convey -- when I say "saying to
18 me," it could be saying to me through one of my staff
19 members -- saying instead of having an agent stand
20 out here, we're going to put a lock on the office.

21 You'll have a key, you Nussbaum, will have
22 a key. We'll have a key. Is that okay? I said yes,

128

1 it's okay. I don't want an agent standing there 24
2 hours a day if they felt it wasn't necessary.

3 Q Who had the keys to the lock that was put
4 on?

5 A The Secret Service retained the key and
6 they gave me the key. I retained the key.

7 Q Was there another key that Mr. Foster's
8 secretary had?

9 A Maybe. I don't remember. I only remember
10 two keys, but it is possible that she had one. I
11 just don't remember that. I don't think so. If you
12 ask me what my best belief is, I believe that she did
13 not. If you're asking me is it possible that she had
14 one, yes, it's possible.

15 Q Did you have a conversation with
16 Mr. Heymann either during the meeting that took place
17 on the 21st with Mr. Margolis and Mr. Adams or later
18 that day?

19 A The only conversation I remember with
20 Mr. Heymann -- I spoke to Mr. Heymann a lot, but the
21 only conversation that I remember -- I'm not saying
22 there weren't others but I don't remember them -- is

1 the conversation, would you coordinate the
2 investigations, and I remember that. I'm not even
3 100 percent sure it was with him, although I'm 90
4 percent sure it was with him, rather than Janet Reno.

5 Q At a point in this meeting we're talking
6 about, with Mr. Margolis and Mr. Adams and the other
7 law enforcement people, did the Park Police conduct
8 an interview of you concerning the previous evening?

9 A I know the Park Police interviewed me.
10 They may have asked me questions there and if they
11 asked me questions, I would have responded, I
12 believe.

13 Q Was that after the point in time in which
14 the discussions about the mechanics of the
15 investigation had been completed?

16 A I don't remember. I don't remember.

17 Q And your recollection is that at the time
18 you finished discussing the mechanics of the document
19 review with Mr. Margolis and Mr. Adams, your
20 recollection is there was no settled agreement as to
21 how it was to proceed?

22 A There was no settled agreement as to how it

1 was to proceed. There were various options
2 discussed, and it was sort of left hanging, that we
3 would think about what's the best way of doing it.
4 It was in flux. That's what I remember, and I was
5 trying to come to grips with the various issues.

6 Q And who was it left -- how was it left in
7 terms of who would make that final decision?

8 A It was sort of left with both of us. This
9 was not adversary. I had a problem. The problem was
10 I had an institutional responsibility to protect
11 certain privileges, certain institutional concerns.
12 They had a goal of searching an office to see if
13 there was a suicide note. Both of us were working
14 together. We weren't adversaries. How do we solve
15 this problem that you have, I have, we both have and
16 we would talk about it. We could do this, we could
17 do that. That has this problem, that has that
18 problem.

19 We sort of left it at the end of the
20 meeting, yeah, we'll think about it. We're going to
21 do it tomorrow anyway. We'll think about it. We'll
22 work together to try to solve it. That was the

1 spirit of that discussion, and that's how it was
2 left.

3 Q And it was not left that anyone would make
4 a decision?

5 A You know, look, ultimately I'm the White
6 House counsel but it was not left in a way -- at
7 least I don't remember -- listen, I will decide, and
8 I will let you know. It's we'll discuss it, we'll
9 discuss it. That's my style, I think, and I think I
10 followed that in this situation.

11 Q Now, apart from discussing the interviews
12 to take place the next day and the review of
13 Mr. Foster's office to take place the next day, was
14 there any other discussion in this meeting about the
15 mechanics of coordinating these investigations?

16 A There may have been, but I don't remember.

17 Q In the context of this meeting, did the
18 Park Police ask you about what had happened on the
19 20th, July 20th, in connection with Mr. Foster's
20 behavior and what occurred back at the White House
21 after you learned that he had been found?

22 A You may be looking at a report or have

1 notes or something. I don't remember. They may
2 have. It's sort of a likely thing. I mean, I was
3 in -- I mean, I was distraught that day, too, and
4 full of grief and tired, but I was functioning, and I
5 could answer questions.

6 If they wanted to ask me some such
7 question, I would answer it to them. I wasn't saying
8 don't talk to me today, talk to me tomorrow, I will
9 be better tomorrow. Since they were with me, if they
10 were asking me questions, I would undoubtedly have
11 responded.

12 Q Did they interview you the next day?

13 A They interviewed me at some point.

14 Q You don't know if it was the 21st or the
15 22nd?

16 A I don't remember. Obviously I was somebody
17 there they wanted to talk to.

18 Q Did you tell them on the night of the 20th,
19 you and Ms. Thomasson and Ms. Williams had conducted
20 a brief search of Mr. Foster's office?

21 A I've been thinking about that. I don't
22 remember. I have a -- you would know. I have some

1 sort of vague recollection that I may have mentioned
2 to them or probably did mention to them that I had
3 been in the office briefly the night before to see if
4 there was a suicide note but I'm not positive. I
5 just don't know.

6 Q Did you tell them when you came into the
7 office that Ms. Thomasson and Ms. Williams were there
8 already?

9 A I don't remember what I told them.

10 Q Is it fair to say that when you came in to
11 the White House counsel's suite on the 20th, that
12 night, and found Ms. Thomasson and Ms. Williams
13 there, you didn't know how long they had been there?

14 A I know what they said.

15 Q My first question is as you walked in, you
16 didn't know how long they had been there?

17 A That's correct.

18 Q You hadn't seen them go in?

19 A I hadn't seen them go in.

20 Q And what you knew is that they had told
21 you, what?

22 A That we had just arrived. We just got

1 here, something like that.

2 Q Did they volunteer that to you?

3 A Yes. I remember saying -- because it was
4 in response to my question, what are you doing here?
5 We just arrived. We just got here. We're looking
6 for a note. That's what I remember of the
7 conversation.

8 Q Did you tell that to the Park Police on the
9 21st?

10 MR. PEDOWITZ: He doesn't remember. He's
11 already testified he doesn't remember whether he was
12 questioned by them that day, and he doesn't remember
13 what, if anything, he said to them.

14 BY MR. CHERTOFF:

15 Q Let me withdraw the day and say did you
16 tell the Park Police over the next couple of days
17 this interchange with Ms. Williams and Ms. Thomasson?

18 A The interchange?

19 Q Concerning the fact --

20 A They didn't -- I had just arrived. The
21 answer is I don't remember. If they did the kind of
22 questioning that you were doing now, did they say

1 okay, what did you do, then I would have told them.
2 If it came up were you in the office, you know, prior
3 to -- were you in the office after Vince's death on
4 July 20, I would have said yes, I was in there
5 looking for a note.

6 It depends. If they asked the questions
7 you ask, obviously the way you're asking, I would
8 have responded, and they may have. See, I'm not
9 sure. They may have done it step by step. On the
10 other hand, if they said were you in there at all or
11 I volunteered -- I made a cursory look, I probably
12 didn't give the kind of chronology.

13 MR. PEDOWITZ: Can we just have a very
14 short break?

15 MR. CHERTOFF: Sure.

16 (Witness conferred with counsel.)

17 BY MR. CHERTOFF:

18 Q Is there an answer you want to supplement?

19 A No.

20 Q Is there anything else you remember about
21 your being interviewed by the Park Police concerning
22 the events of the night of July 20th?

1 A No.

2 Q Was there a point -- let me withdraw the
3 question.

4 When the meeting broke up, the Park Police
5 and the FBI and the Department of Justice people left
6 the White House as far as you knew?

7 A Yes.

8 Q Did any of them stay behind?

9 A I don't believe so.

10 Q Did you have any further contact with
11 anybody from the Department of Justice or the FBI
12 that day after that?

13 A I don't believe so.

14 Q Did someone come in with a bag of trash
15 that had been in Mr. Neel's office?

16 A Yes.

17 Q Who was that?

18 A Cliff Sloan.

19 Q Did he tell you why he was bringing it back
20 in?

21 A No. I think -- I don't remember how that
22 happened. My best memory is that I asked that --

1 somebody reminded me or I remembered -- maybe nobody
2 reminded me, I just remembered that we had left this
3 bag of trash and I asked Cliff to go down to Roy
4 Neel's office and bring the trash back into Foster's
5 office and he did so.

6 Q Do you know where he put it?

7 A All I know is he put it in Foster's office.

8 Q Now, I want to direct your attention to the
9 period of time after the department -- let me
10 withdraw the question.

11 During the meeting with the Department of
12 Justice people and the Park Police, Mr. Margolis and
13 Mr. Adams, did you make any telephone calls?

14 A Perhaps.

15 Q Did you receive any calls?

16 A I don't remember.

17 Q Did you have any conversations with anybody
18 by telephone concerning the subject matter of the
19 meeting?

20 A I don't recall. I just don't remember. It
21 could be. I don't remember.

22 Q From the time that -- and I want to direct

1 your attention to the period of time from the
2 beginning of the meeting with Mr. Margolis and
3 Mr. Adams, including any interruptions there may have
4 been, through to the time that you went to sleep that
5 night. During that period of time, did you have a
6 telephone conversation with Susan Thomases?

7 A I don't remember speaking with Susan
8 Thomases on the 21st. Maybe I did. I just don't
9 remember. I remember speaking with Susan Thomases on
10 the 22nd.

11 Q Was that conversation with her on the 22nd
12 in person or by telephone?

13 A By telephone.

14 Q When that conversation on the 22nd took
15 place, did you know where Ms. Thomases was?

16 A No.

17 Q Did you know that she was in Washington?

18 A I don't remember. I really should say I
19 don't remember. She may in a conversation say I'm
20 calling you from Washington. I just don't remember.

21 Q Did she call you or did you call her?

22 A My memory is she called me, but that

1 doesn't mean that I didn't get a message from her and
2 I called her back. My memory is she called me.

3 Q What was the conversation on the 22nd with
4 Susan Thomases?

5 A The conversation on the 22nd was that she
6 asked me what was going on with respect to -- what
7 was going on with respect to the investigation or the
8 examination -- the examination of Mr. Foster's
9 office. She had heard there were discussions in the
10 White House with respect to this issue, which there
11 were on the 22nd, which you'll get to, I presume.
12 Was everything okay, what was going on, and I said I
13 am having discussions with people.

14 See, I remember this conversation before
15 the search, but it could have been after the search.
16 That's one of my problems.

17 But I remember saying Susan, I've been
18 talking to people in the White House, how the search
19 would be conducted. I will determine what the right
20 procedure is or I have determined what the right
21 procedure is and I followed it, depending on if that
22 conversation took place before or after the search.

1 We're going to follow the procedure that I think is
2 right, and that's the way -- that's what I'm going to
3 do, and that's the kind -- I think -- what I'm
4 determining is the proper way to act with respect to
5 this matter.

6 Q How long was the conversation?

7 A A few minutes, not very long.

8 Q Did she tell you how she had heard there
9 were discussions concerning the manner in which the
10 review would occur?

11 A The search would occur.

12 Q The search would occur.

13 A No -- she didn't say how. She just said
14 she had heard.

15 Q And what else did she say in the
16 conversation?

17 A That's all I remember, that she heard there
18 were discussions or that there were -- she might have
19 even said disagreements, that she'd heard that and
20 what was going on.

21 Q Did you ask her where she heard that?

22 A No, I didn't ask her where she heard that.

1 (Pause.)

2 Q Did you feel comfortable talking about this
3 issue with her?

4 A Yes.

5 Q Did you feel it was her business?

6 A Yes. She's a friend. She's a friend of
7 mine. She's a friend of a lot of people in the White
8 House, including the President and the First Lady.
9 She's an advisor. This was a decision that had to be
10 made as to how the search was going to be conducted,
11 and I felt comfortable discussing it with her.

12 Q Do you know whether anybody had asked her
13 to give advice regarding how the search would be
14 conducted?

15 A I don't know anybody who gave her advice.

16 Q Did you hear whether anybody had asked her
17 to give that kind of advice?

18 A No.

19 Q Did she mention the First Lady in the
20 telephone call?

21 A I don't recall her mentioning the First
22 Lady in the telephone call.

1 Q Did she say that the First Lady was
2 concerned about giving the law enforcement people
3 unfettered access to the documents?

4 A No.

5 Q Did she say that anybody was concerned
6 about giving law enforcement people unfettered access
7 to the documents?

8 A She said people are concerned about whether
9 I was using the correct procedure or whether the
10 procedure was -- people were concerned or
11 disagreeing, something like that, whether a correct
12 procedure was being followed, whether I was using the
13 correct procedure, whether it was proper to give
14 people access to the office at all, something like
15 that. But I said Susan -- she wasn't in the White
16 House -- at least I didn't know she was in the White
17 House -- I said I'm having discussions with various
18 people. As far as the White House is concerned, I
19 will make a decision as to how this is going to be
20 conducted. It's going to be done the right way. It
21 will balance out the various interests. It's going
22 to be done the way I think it should be done.

1 Q Did she say people were concerned about
2 giving unfettered access to the law enforcement
3 people to the documents?

4 MR. PEDOWITZ: Those words?

5 MR. CHERTOFF: In substance, that they had
6 that particular concern.

7 THE WITNESS: No, no. What I remember --
8 it was not a concern about giving people access to
9 documents. There was a sense of -- this notion of
10 people's privacy shouldn't be invaded, that kind of
11 sense, that people were concerned that any procedure
12 that's followed is done with appropriate regard for
13 people's privacy interest.

14 There was no fear of documents or people
15 looking at any particular document, but there was
16 that sense -- but in any event, I would deal with the
17 issue and I told her I would deal with the issue, and
18 I would make a decision as to what to do.

19 BY MR. CHERTOFF:

20 Q Who did you understand the people were that
21 she was referring to when she said people were
22 concerned?

1 A I didn't have any understanding.

2 Q You had no impression?

3 A No, I had no impression because she has
4 contact with various people in the White House.

5 Q Was it your impression that when she made
6 this -- when you had this discussion with her, that
7 the people she was talking about that had expressed
8 some kind of concern were the President or the First
9 Lady?

10 A She didn't say that the President or the
11 First Lady had that kind of concern.

12 Q Was it your impression she was referring to
13 the President or the First Lady?

14 A No, it wasn't my impression that she was
15 referring to the President or the First Lady
16 specifically. It wouldn't surprise me. I mean,
17 Susan talks to a lot of people. She has access to
18 the President and the First Lady. The President and
19 First Lady were removed from this thing. They
20 weren't involved -- I had no discussions with the
21 President or the First Lady about this, and it
22 wouldn't surprise me that the President or the First

1 Lady would have had a discussion with her with
2 respect to this issue.

3 And indeed, I think the President or the
4 First Lady, who are able people, would also wish a
5 proper procedure to be followed with appropriate
6 protection of institutional -- of the interests that
7 I talked about and the privileges that I talked about
8 and the privacy interest that I talked about. So
9 it's not as if I thought it's impossible she talked
10 to the President or First Lady or it's likely she
11 talked to the President or First Lady, she was
12 expressing a concern that people in the White House
13 were expressing on that day, July 22nd.

14 Q Wasn't it your impression that when she
15 talked to you about people having a concern, that she
16 was talking about, and conveying to you, that it was
17 the First Lady who had a concern about it?

18 A No, that was not my specific impression,
19 although it's quite possible that the First Lady did
20 have a concern about it. I don't know. I didn't
21 talk to the First Lady. It was not my specific
22 impression that she was conveying a concern of the

1 First Lady.

2 Q Didn't you tell Mr. Neuwirth after that
3 conversation -- please wait for the question -- that
4 Susan --

5 A I wasn't answering it.

6 Q -- that Susan Thomases had indicated that
7 she and the First Lady were concerned about the way
8 in which this procedure was going to be carried out?

9 A I remember what Susan -- I don't remember
10 what I said to Mr. Neuwirth, if I said anything to
11 Mr. Neuwirth. I don't remember a conversation with
12 Mr. Neuwirth after this conversation that I had with
13 Susan Thomases. I'm telling you that she did not
14 mention in this conversation -- I don't have any
15 memory of Susan Thomases mentioning the First Lady to
16 me in this conversation. I do remember her saying
17 what I said, that people were concerned.

18 Now, is it possible that I extrapolated
19 after that conversation and said something to
20 Neuwirth along those lines? I guess it's possible
21 that I did that. I'm not saying if Neuwirth has
22 testified or says that, I have no memory of that.

1 Q You'd have had no reason at that point in
2 time to mislead Mr. Neuwirth or give him erroneous
3 information about the call; right?

4 A Absolutely. I would have no --

5 Q No reason to do that?

6 A -- no reason to do that.

7 Q Did you have any conversation with the
8 President or the First Lady on the 21st concerning
9 Vincent Foster's documents?

10 A No.

11 Q Did you have a conversation with anybody
12 else on the 21st concerning Vincent Foster's
13 documents?

14 A On the 21st?

15 Q I'm sorry. I withdraw the question.

16 On the 22nd, did you have a conversation --
17 let me withdraw the question and start over.

18 Did you have a conversation with the
19 President or the First Lady on the 22nd concerning
20 Vincent Foster's documents?

21 A No.

22 Q Who is Carolyn Huber?

1 A Carolyn Huber is a friend of the Clintons
2 from Arkansas who works on the White House staff,
3 primarily, I think, in connection with the First
4 Lady.

5 Q Doing what?

6 A I don't know. Social things, gift things,
7 things like that. I don't remember at this point.

8 Q Did you talk to her on the 21st of July
9 after your meeting with Mr. Margolis and Mr. Adams?

10 A I don't remember talking to her on that
11 day. I believe no.

12 Q Did you try to reach her?

13 A No, I didn't.

14 Q Did you page her?

15 A I have no memory of paging her. I can't
16 think of any reason why I would page her other than
17 perhaps what are the funeral arrangements going to be
18 made for Vince. That's the only thing I can think of
19 talking to her on that day.

20 Q Was she handling the funeral arrangements?

21 A I don't know. I don't remember talking to
22 her or remembering this, but if I'm thinking back on

1 those days, if I wanted to find out about the funeral
2 arrangements, she's the kind of person I might ask
3 about that because she's an Arkansas person, so she
4 may know what's going on with respect to the funeral
5 arrangements.

6 But having said that, I have no memory of
7 talking to her about the funeral arrangements or
8 anything else.

9 Q Mr. Kennedy was an Arkansas person who
10 would know about the funeral; right?

11 A It's possible I could talk to Mr. Kennedy.

12 Q Mr. Watkins was an Arkansas person who
13 would know about it?

14 A Yes, but it was more likely she would know
15 about it.

16 Q Carolyn Huber?

17 A Because she had been in touch with people
18 in Arkansas. There were Arkansas people working in
19 the White House. Carolyn was an Arkansas person
20 working in the White House but I believe she was
21 involved more in Arkansas affairs, more social things
22 with regard to the Clintons.

1 Q Wasn't Maggie Williams involved with
2 scheduling?

3 A Yes.

4 Q Wouldn't she be someone who would know
5 about the funeral?

6 A She could, that's right.

7 Q Is there any reason you paged Carolyn Huber
8 on the 21st?

9 A I have no memory of paging Carolyn Huber on
10 the 21st, and I don't believe I paged Carolyn Huber
11 on the 21st.

12 Q Can you explain why there's a record that
13 you paged her?

14 A No, I can't explain why I paged Carolyn
15 Huber on the 21st. The record may be incorrect. I
16 certainly don't remember talking to her or reaching
17 her.

18 MR. PEDOWITZ: Is this a good time, Mike,
19 or do you want to continue?

20 MR. CHERTOFF: Just a moment longer. I
21 just need a second.

22 BY MR. CHERTOFF:

1 Q Does the number 757-2258 mean anything to
2 you?

3 A No.

4 Q You don't recognize the number?

5 A No.

6 Q Does the 757 exchange mean anything to
7 you? Is that a White House exchange?

8 A It doesn't ring a bell.

9 Q Is that a signal office through which you
10 can reach people through the White House?

11 A I don't remember it. I've been gone now
12 for a while.

13 MR. PEDOWITZ: Off the record.

14 (Discussion off the record.)

15 BY MR. CHERTOFF:

16 Q At the end of the day on the 21st, your
17 testimony is -- let me withdraw the question.

18 As of the end of the day on the 21st when
19 you went home, did you -- had you made a decision
20 concerning the manner in which the law enforcement
21 authorities would be permitted to look at the
22 documents in Mr. Foster's office?

1 A Had I made a decision at the end of the
2 21st, no. I was still thinking about it.

3 Q When did you make that decision?

4 A I made it sometime the morning of the 22nd
5 after talking to people about it, engaging in a
6 number of conversations. I made it sometime the
7 morning of 22nd.

8 Q During the 21st until you went to bed, went
9 to sleep, either late in the night of the 21st or
10 early hours of the 22nd, did you have any
11 conversations with anybody that you understood to be
12 communicating to you the wishes of either the
13 President or the First Lady in connection with the
14 handling of the Vincent Foster documents?

15 A No.

16 MR. CHERTOFF: Good time for a break.

17 (Whereupon, at 12:35 p.m., the deposition
18 was recessed, to be reconvened at 2:00 p.m. this same
19 day.)

20

21

22

AFTERNOON SESSION (2:18 p.m.)

Whereupon,

BERNARD W. NUSSBAUM

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Continued)

BY MR. CHERTOFF:

Q Let me direct your attention to July 22nd, which is the Thursday. Did you have occasion to talk to John Podesta early in the morning that morning?

A I don't recall talking to John Podesta that morning.

Q Did you beep him, try to beep him?

A I don't recall trying to beep him.

Q Did he try to beep you?

A I have no memory of that.

Q Did he beep you and leave you a message, "did you find Heymann"?

A I have no memory of that, or no knowledge of that.

Q Is there any reason that Mr. Podesta would have been involved early in the morning on any

matters where he would be concerned with whether you talked to Mr. Heymann?

A We had -- I don't recall any matters at this point. We had numerous matters going on in the White House and it may have been one of those matters, except I have no memory of that fact at this time.

Q Was Mr. Podesta involved in discussions about the handling of the documents in Mr. Foster's office?

A Not to my recollection.

Q Did you get paged by Susan Thomases at 8:00 a.m.?

A I don't remember that. I talked to her that day. I remember talking to her, as I testified earlier. A normal way of talking with somebody in the White House is to be paged and to put a call in to that person.

Q Do you remember her trying to get you at 8:00 in the morning?

A I don't remember. I remember talking to her sometime that day.

1 Q I'm going to read you, just for the sake of
2 refreshing your recollection, from Z647. It has
3 number 88331, which I assume is some code number. It
4 says "please call Susan Thomases at 202-659-8787,
5 operator 71." And I can tell you that it's been
6 represented to us that this is a document provided to
7 us by the White House that is a log of messages left
8 on the pager. And it's 8:01 a.m. is listed next to
9 it.

10 Does that refresh your recollection that
11 Susan Thomases was in Washington on the 22nd and
12 tried to have you call her in Washington at 8:01
13 a.m.?

14 A No.

15 Q Does it help you recall whether you called
16 her later that day or whether she called you?

17 A No, it doesn't. It was often the case that
18 I would be paged by someone and not get back to them
19 for a while, but I don't remember that particular
20 page.

21 Q Does it help you to remember whether your
22 conversation with Ms. Thomases occurred earlier in

1 the day on the 22nd?

2 A You see, as I testified earlier, I'm not
3 100 percent sure whether I talked to her prior to the
4 search of the office on that day or after the search
5 of the office on that day. It sort of leads me to
6 believe, if that's accurate -- and I have no reason
7 to believe it's not accurate -- that I ended up
8 talking to her prior to the search. I just have no
9 memory. I'm not positive.

10 Q Could it be that you talked to her in the
11 morning of 22nd before you met again with
12 Mr. Margolis and Mr. Adams?

13 A It's possible I did. I don't remember when
14 I talked to her. I know I talked to her that day
15 either before or after the search. It could have
16 been before meeting with Margolis and Adams on that
17 day or after meeting with them on that day.

18 Q Did you know there was a point in that day
19 that she was meeting with Maggie Williams?

20 A Did I know? No, I didn't know.

21 Q Did Maggie Williams tell you on the 22nd
22 that she had been meeting or had seen Susan Thomases

1 in her office?

2 A I have no recollection of her telling me.

3 Q Directing your attention to approximately
4 8:00 in the morning, did you come in to the White
5 House at that time on Thursday, about 8:00 in the
6 morning?

7 A It would be later than I normally come in.
8 It's possible. Again, it was a hectic time. I would
9 bet I came in earlier. I would bet I came in for the
10 7:30 meeting but I don't remember.

11 Q Did you have your own staff meeting at
12 8:00?

13 A My own staff meetings are usually at 9:00.

14 Q Did there come a point, let's say, around
15 8:00 or 9:00 when people --

16 A It could be that, on that day because of
17 the interviews of staff, we changed the meeting
18 schedule, but I don't remember. I really just don't
19 remember.

20 Q Now, the night before, on the 21st, were
21 there -- did the attorneys in your office talk to
22 members of the staff concerning the anticipated

158

1 interviews on the 22nd?

2 A I don't know. Neuwirth and Sloan were with
3 me when we had this meeting on the afternoon of the
4 21st. It may be, since I was looking to them to
5 assist the staff members who would be giving
6 interviews, it may be that they commenced their
7 activities late that afternoon or it may be that they
8 did it early the next morning. I just don't
9 remember.

10 Q Did you direct them to help prepare the
11 witnesses for the interviews with the Park Police the
12 next day?

13 A Yes, I told Neuwirth and Sloan to assist
14 the witnesses to testify the next day.

15 Q And did you yourself work with any of the
16 witnesses to prepare them for the next day?

17 A No.

18 Q Now, the next day, Mr. Margolis and
19 Mr. Adams came back?

20 A Yes, they came back.

21 Q And they came back with the FBI and the
22 Park Police?

1 A They came back with the FBI and the Park
2 Police. The Park Police, I believe, came in early to
3 conduct the interviews. I don't think they all came
4 in at once necessarily. They all came back, but
5 whether they came back together or not, I don't
6 remember.

7 Q So your recollection is that the Park
8 Police may have come in even before Mr. Margolis and
9 Mr. Adams?

10 A Yes.

11 Q Did they begin interviewing immediately?

12 A Fairly early --

13 MR. PEDOWITZ: "They" being?

14 MR. CHERTOFF: The Park Police.

15 THE WITNESS: I believe so, fairly early.

16 I wasn't there when they were beginning to interview
17 people.

18 MR. PEDOWITZ: You weren't where?

19 THE WITNESS: Where the interviews were
20 taking place.

21 BY MR. CHERTOFF:

22 Q Well, let me try and understand this. At

160

1 the time that law enforcement officials first started
2 to come in on the 22nd, were they waiting for some
3 decision about what was going to happen next in terms
4 of the investigative process, or did they simply
5 immediately begin the process of asking to start
6 interviews?

7 A My recollection is when they came in, they
8 started interviews. That's what I remember.

9 Q And who assigned locations where the
10 interviews would take place?

11 A I don't know. I would assume Neuwirth or
12 Sloan.

13 Q Do you know whether the FBI agents were
14 also involved in, sitting in the interviews with the
15 Park Police?

16 A I don't remember.

17 Q Did you sit in on any of the interviews?

18 A I did not sit in on any of the interviews.

19 Q Did you enter any interviews?

20 A Yes. When I returned to my office from
21 another conversation someplace in the White House,
22 another meeting -- maybe the senior staff meeting, I

1 don't know -- I heard that the interviews were going
2 on, which didn't surprise me because that's what was
3 intended to do, so I just as a courtesy opened the
4 door to one of the interview rooms and walked in. I
5 don't remember whose interview it was even and
6 greeted the Park Police and greeted the people being
7 interviewed, and I said is everything okay, and is
8 everything fine, hello, and they said everything is
9 fine. I said nice to see you, closed the door, left.

10 Q When you say you entered as a courtesy --

11 A Said hello.

12 Q Did you knock on the door?

13 A I was just making a joke. No, I don't
14 believe so. I opened the door.

15 Q Did you burst through the door?

16 MR. BEN-VENISTE: I think he said he opened
17 it.

18 THE WITNESS: I just opened the door,
19 walked in.

20 BY MR. CHERTOFF:

21 Q And what was the reaction of the people
22 inside? Did they appear to be surprised?

1 A They looked up. They didn't expect me to
2 come in, I guess. The door was closed. I walked
3 in. I don't remember bursting in, but after the last
4 set of hearings, everybody talking about my intense
5 manner, it could be somebody thought I burst in.

6 Q Who was being interviewed in that --

7 A I don't remember who was being interviewed.

8 Q Was there a lawyer from White House
9 counsel's office present?

10 A Yes, there was a lawyer present.

11 Q Who made the decision that lawyers from the
12 White House counsel's office should sit in on the
13 interviews?

14 A I did.

15 Q When did you make that decision?

16 A The day before when we discussed that
17 interviews would take place of my staff members.

18 Q When you say we discussed it, when who
19 discussed it?

20 A When I discussed it with the law
21 enforcement people present in my office.

22 Q So in the presence of Margolis and Adams

1 and the other law enforcement people, you said that
2 lawyers from the White House counsel's office would
3 be sitting in on the interviews?

4 A I don't remember saying it. I may have
5 said it. I probably said it. I just don't remember,
6 but I made the decision to do it, and I acted in
7 accord with that decision.

8 Q But you're clear that there came a point in
9 time at least where you directed Sloan and Neuwirth
10 to sit in on the interviews?

11 A Oh, yes.

12 Q Now, you understood that Sloan and Neuwirth
13 themselves would be interviewed at some point?

14 A Yes.

15 Q Why did you place potential witnesses in
16 the position of being lawyers present at interviews
17 with other witnesses?

18 MR. BEN-VENISTE: Didn't we cover this
19 before lunch?

20 MR. CHERTOFF: No, I don't think we did,
21 Mr. Ben-Veniste.

22 MR. BEN-VENISTE: I believe we did in some

1 detail.

2 MR. CHERTOFF: No, I think we discussed
3 preparation before lunch. Now we're discussing
4 presence during the interview process.

5 BY MR. CHERTOFF:

6 Q To get back to my question -- let me get it
7 read again.

8 (The reporter read the record as requested.)

9 THE WITNESS: I didn't consider this an
10 adversary investigation; this was a fact-gathering
11 inquiry. I thought my staff was -- the secretaries
12 and others were in grief and distraught. I thought I
13 was helping the fact-gathering process by having
14 experienced lawyers who I had confidence in calm
15 people down, just calm them down, explain to them
16 that it was necessary to provide what they know, to
17 tell the truth. It would facilitate, as I said
18 earlier, in our last repartee with respect to this,
19 the fact-gathering process, it would calm my people
20 down, which I was very concerned about, that they
21 just should not crack up under the strain of Vince's
22 death.

1 So I felt it was serving the purposes of
2 law enforcement to the extent that law enforcement
3 wanted facts, which they did, and it was serving the
4 purposes of my office, just to bring some calm to it
5 in a difficult time.

6 BY MR. CHERTOFF:

7 Q Did you think it might tend to confuse, in
8 the minds of the lawyers who were present, their own
9 recollections of what they were hearing other
10 witnesses saying?

11 A No, I didn't think so.

12 Q Did you think it might have a chilling
13 effect on the witnesses?

14 A No, I didn't think so.

15 Q Did you think that if one of the witnesses,
16 for example, might want to suggest that Mr. Foster
17 had a problem with you, that that witness might be
18 reluctant to do so when one of your lawyers was
19 present in the room?

20 A No, I didn't think that any witness would
21 be reluctant to say anything because one of the
22 lawyers was present in the room.

1 Q Because one of the lawyers that's in the
2 counsel's office that works for you is present?

3 A Correct. If a witness wanted to say that,
4 then that person should say it and a lawyer in the
5 room present would not inhibit that witness.

6 We had a small cohesive staff. I don't
7 think it would have any inhibiting effect.

8 Q Was this actually something you thought
9 about and rejected or you just didn't think about it?

10 A What?

11 Q The question of inhibiting effect or
12 chilling effect?

13 A That's a good question. I don't remember
14 really whether I thought about it or not. I may
15 have. It's possible that it occurred to me but if I
16 did, I rejected it out of hand. It would have no
17 inhibiting effect, it would have a facilitating
18 effect.

19 Q Did you think the White House counsel's
20 office should recuse itself from any participation in
21 the investigation other than simply providing witness
22 statements?

1 A No.

2 Q Did it occur to you that where the
3 investigation could, to some degree, look into the
4 question of Mr. Foster's work relationships and
5 whether he had problems with work, that perhaps the
6 people he worked with ought not to be the people who
7 were intimately involved in the investigation?

8 A The White House counsel's office -- I
9 didn't consider the White House counsel's office
10 conducting the investigation. The investigation was
11 not delegated to the White House counsel's office.
12 The White House counsel's office, the investigation
13 was being conducted by a number of law enforcement
14 agencies, initially primarily the Park Police and
15 others who were working with the Park Police.

16 They were conducting the investigation. We
17 were just responding to inquiries and assisting in
18 that investigation. There was nothing to recuse
19 ourselves from and indeed, I thought the assistance
20 of lawyers for the witnesses would aid the
21 fact-gathering inquiry, which was being conducted by
22 us.

1 Q Who was making the decisions about the way
2 in which the interviews would be conducted?

3 A The law enforcement people.

4 Q Was it their decision that lawyers from the
5 White House counsel's office should sit in?

6 A No. It was my decision, but there was no
7 objection to that decision. Later on, after the
8 handwritten list was found, other investigations took
9 place and a request was made of me that lawyers not
10 sit in on those interviews, and I thought about it
11 and I adhered to the request, I accepted the request.

12 Q Is it your testimony that at the time the
13 interviews were being conducted, the law enforcement
14 people didn't express any objections to any of the
15 lawyers about their being present for these
16 interviews?

17 A I have no memory of any objections being
18 expressed or certainly -- well, I'll leave it at
19 that.

20 Q Did you ask the Park Police or the FBI
21 whether they were willing to have or agreeable to
22 having lawyers from the White House counsel's office

1 participating in these interviews?

2 A I don't recall asking anyone.

3 Q There came a point in time that you saw
4 Mr. Margolis and Mr. Adams; right?

5 A On July 22nd, yes.

6 Q Was this during the course of the
7 interviews being conducted or after they've been
8 completed?

9 A I can't recall. I think it was in the
10 course of the interviews being conducted, but it
11 could have been at the conclusion of the process.

12 Q Did you meet in your office with them?

13 A I believe so, yes.

14 Q What was the discussion?

15 A That we would now -- we were going to enter
16 the Foster office to conduct a search for a suicide
17 note or an extortion note or something like that.

18 Q And this was in the morning; right?

19 A It was sometime in the morning, but I don't
20 remember when. It could be late in the morning. The
21 search didn't start until the afternoon, early
22 afternoon, but I met with them in the morning. I

170

1 think it was in the morning.

2 My memory is there was a delay between the
3 time of my initial meetings with them and the time we
4 started.

5 Q And what did they say when you said we're
6 going to go into -- what was the discussion in this
7 meeting about going in to conduct the search?

8 A There may have been a number of
9 discussions, but I'll tell you what I remember. I
10 remember the substance of it. I remember coming and
11 saying okay, let's go in, and we'll search for a
12 note, a suicide note, and the way I intend to conduct
13 this, because you know my concerns about privilege
14 and confidentiality and privacy, here's what I'd like
15 to do and what I intend to do is, we'll go in
16 together. We'll, in effect break -- we'll walk in
17 together.

18 Nobody has been in that office now for a
19 while. We'll walk in together, and I will go through
20 the files. You'll all come in with me. You will see
21 what I'm looking at. I will describe to you what I'm
22 looking at in some general terms, but I will do the

1 looking. I may show you the first page of something
2 or the title of something, but we'll see as it goes
3 along and obviously if I find a suicide note or
4 extortion note, I'll give it to you.

5 But I would like -- I intend to -- I would
6 like to and I intend to conduct the search in this
7 matter because this basically enables us all to see
8 whether there's a suicide note or extortion note, and
9 also enables me to preserve the privileges that I
10 think it's my obligation to preserve.

11 I said something like that. Did I make it
12 in that speech form that I just gave to you?
13 Probably not. It was probably more in a dialogue,
14 but that was the essence of what I said.

15 Q What did they say?

16 A They didn't -- they weren't happy. I have
17 a vague recollection of somebody -- the first page
18 being mentioned again, as we discussed the day
19 before, that possibility. That was an option that
20 was discussed the day before, mentioned again. I
21 said look, I want to conduct it -- I think the right
22 way to conduct it is the way I just described. That

1 meets your interest and it meets our interest. I'm
2 worried about things like waiver and other things
3 like that. I don't know what good that does to let
4 you look at the first page, anyway, of something.

5 I don't know where it gets us in this
6 process, and it may create waiver problems for me,
7 but let's go in and let's do it. And let's see how
8 it goes. And if you have objections later on, we can
9 discuss it, but you want to go in, you're anxious to
10 go in, you're anxious to look for this note. I'm
11 anxious to see if there's a note there, to conduct an
12 intense search for that. So let's just do it.

13 Let's try it my way and if it doesn't work,
14 ultimately we can discuss it some more, whether we
15 can do it some more, and they -- look, I was a
16 prosecutor. I understand they would rather see more
17 or read more than less, but I said let's try to do it
18 this way. I think it meets everybody's needs, and
19 they went along. They said okay.

20 Q So what did you do?

21 A We went into the office.

22 Q Right away?

1 A At some point, yes. See, I said earlier I
2 may have had a number of discussions. I don't
3 remember the sequence of events. This was sort of
4 the penultimate discussion I described to you because
5 it's the only one I remember. There may have been
6 preliminary discussions, but this is the essence of
7 the discussion that I remember.

8 Q What were the preliminary discussions?

9 A I don't remember. If there were others, I
10 don't remember. I'm saying it's possible there were
11 others.

12 Q Did you talk to anybody about it besides
13 Mr. Adams and Mr. Margolis from the Justice
14 Department?

15 A I don't remember. My memory is Adams and
16 Margolis.

17 Q Did you have a conversation with
18 Mr. Heymann?

19 A It's possible, but I don't remember. It is
20 possible I spoke to Mr. Heymann on the phone, but I
21 don't remember that.

22 Q What was that discussion about?

1 A I don't know.

2 Q You have no recollection of it?

3 A I have -- I recollect discussions with
4 Heymann. I don't recollect the discussion on that
5 day with Heymann. I recollect the July 21 discussion
6 with Heymann. I also recollect discussions
7 subsequent to the events with Heymann, but I don't
8 recollect -- and I've been searching my
9 recollection -- a discussion with Heymann on that
10 day, although it's possible because I talked to
11 Heymann a lot, and I know that I talked to Heymann
12 about these matters and certainly if Heymann
13 suggested there was a discussion, I'm not disputing
14 that fact.

15 I don't know what he's going to say but I'm
16 not disputing that fact. If you're asking me do I
17 remember such a discussion, the answer is no, I don't
18 remember.

19 Q When you had your conversation with
20 Mr. Margolis in the morning and you told him the way
21 you wanted to proceed with this, did he tell you that
22 he was upset with this as a change in plan?

1 A I don't remember that. I do remember some
2 expression of unhappiness, but I don't remember that.

3 Q Did he threaten to leave?

4 A I don't remember him threatening to leave.

5 Q Did he say mail us the results?

6 A I don't remember him ever saying that.

7 Q Did he place a call to Mr. Heymann?

8 A I have no recollection of that happening.

9 Q Did you then get on the phone with
10 Mr. Heymann in his presence?

11 A I've just testified that I have no
12 recollection of having a conversation with
13 Mr. Heymann, though it's possible I did. If you have
14 something you wish to refresh my recollection with,
15 I'm open to it.

16 Q Let me stimulate your memory with the next
17 questions. Did Mr. Heymann indicate to you "you're
18 making a terrible mistake" on the telephone?

19 A I have no memory of that being said.

20 Q Did he say he was going to call
21 Mr. Margolis and Mr. Adams to come back to the
22 Department of Justice?

1 A I have no memory of him saying that.

2 Q Did you ask Mr. Margolis not to leave?

3 A I have no memory of that.

4 Q Did Mr. Heymann say to you that he was
5 willing to have members of the office of legal
6 counsel come over and review the documents if you
7 were concerned about executive privilege?

8 A I have no memory of that because I have no
9 memory of a discussion with Mr. Heymann. On the
10 other hand, you can try to refresh me.

11 Q Did you tell Mr. Heymann I have to talk to
12 some people about this, and promise to get back to
13 him?

14 A I don't remember that.

15 Q Did you check with anybody after your
16 initial conversation with Mr. Margolis and
17 Mr. Heymann?

18 A See, it is possible that I talked to
19 Margolis and we didn't go right in. The conversation
20 I described was a little later on. I talked to
21 Margolis, and I talked to others in the White House
22 in between, although the major conversation I had

1 with Mr. Margolis was after I talked to other people
2 in the White House because I did have a number of
3 conversations with people in the White House that
4 morning which I do remember.

5 Q About this?

6 A About the way --

7 Q This subject?

8 A Yes, how the office search should be
9 conducted.

10 Q Who did you talk to?

11 A I talked to Bill Burton. I talked to
12 McLarty. I talked to Jack Quinn. Neuwirth and Sloan
13 were around during some of these conversations. I
14 don't remember which ones. I talked to a number of
15 people because they wanted to talk to me about the
16 way that I was going to proceed with regard to the
17 search of Vince's office for a suicide note.

18 Q These people reached out for you?

19 A Yeah, they did reach out for me.

20 Q In a group or one by one?

21 A Both.

22 Q What did Mr. McLarty say to you about it?

1 A Mr. McLarty said -- I have a recollection
2 of Mr. McLarty asking me to come to his office, of
3 somebody asking me to go to Mr. McLarty's office. It
4 may be while I was talking to Mr. Margolis, I got a
5 request to go to Mr. McLarty's office.

6 That's why I don't remember one continuous
7 conversation with Margolis and the others, and
8 McLarty saying to me Bernie, I want to understand
9 what you're doing, what's going on, how you're going
10 to conduct this, explain it to me, what are you going
11 to do. And I said to McLarty basically the same
12 thing I described in my conversation with Margolis.

13 Q This is McLarty himself?

14 A Yes. I think I met with McLarty himself
15 for a short time -- oh, Burton, who is McLarty's
16 senior aide, might have been with me. Burton asked
17 me the same question, and I explained to Burton what
18 I intended to do.

19 Q Did they explain why they were concerned
20 about it?

21 A They said -- they wanted to understand --
22 well, McLarty is not a lawyer. Burton's a lawyer.

1 Burton's saying you're letting people go into a
2 lawyer's office. There's all sorts of institutional
3 issues, privileged issues, and you're just -- you're
4 going to describe the documents to people and look at
5 them but you have a whole bunch of people there.
6 There's going to be stuff, files all over, which
7 there were. Nobody went in to do any straightening
8 up, other than that Betsy Pond thing for an instant
9 on July 21.

10 I mean, is that the right thing to do? Is
11 that the right way to proceed, to let people into a
12 lawyer's office, a high executive branch official?
13 Why are you doing what you're doing? And I said I
14 think it is the right way to proceed, and similar
15 inquiries were made of me by McLarty and by -- they
16 brought Jack Quinn to talk to me.

17 Q Why did they bring Quinn in?

18 A Because they said look, why don't you talk
19 to Jack also? Jack is a lawyer. He may have -- he
20 was the counsel to the Vice President, at one point,
21 now chief of staff to the Vice President. He's a
22 very able guy -- we should get Jack's views. Jack is

180

1 a smart guy, experienced lawyer, let's see what he
2 says. Let's see if he agrees with you on this thing.

3 Q What was his position?

4 A He didn't agree with me.

5 Q What did he think?

6 A He thought it was a mistake and stressed it
7 very firmly. He thought it was a mistake for me to
8 let any law enforcement people go into Foster's
9 office. He thought the proper way to handle this is
10 the way we would handle -- I remember him saying
11 something like this: The way to handle a major
12 litigation, if we were on the outside, a request to
13 examine potentially privileged documents or at least
14 a space in which there were privileged documents, he
15 believed -- he said what we should do is we should go
16 in. We should tell the law enforcement people that
17 they cannot go into Foster's office, that we would go
18 in ourselves, we, the White House would go in, the
19 White House counsel's office.

20 We would make a log of privileged
21 documents, and we would -- and an inventory and other
22 appropriate things that were appropriate to

1 inventory, and we would inform them in due course,
2 when we completed our process, what would be
3 available for them to examine after they made some
4 specific request for us to examine things, and what
5 would not be available to examine. And I said to him
6 I didn't agree.

7 Q Why didn't you agree with that?

8 A I said that would mean -- I said Jack, that
9 would mean -- that will take days, maybe weeks to do
10 it. There's hundreds of pages of documents,
11 thousands of pages of documents in that office
12 potentially. That means these people won't go in for
13 weeks to this office, they won't have any clue for
14 weeks. They're looking for a suicide note, or an
15 extortion note, and that's their job, that's law
16 enforcement.

17 This is a high visibility investigation,
18 and for me to tell law enforcement that this is like
19 same major antitrust case, go home, we will do a log,
20 that's not realistic. They'll be frustrated.
21 They'll be angry. They may be suspicious.

22 Q They might seek a subpoena?

1 A If they seek a subpoena, Quinn wouldn't
2 mind that because that would mean you'd go through
3 this whole log procedure.

4 I said they have a narrow request. They
5 want to search the office to see if there's a suicide
6 note or an extortion note. It's crazy for us to keep
7 them out and to create all these negative feelings
8 and potential suspicion, when all we've got to do is
9 just walk in and we'll look through the office. And
10 I've come up with a way of satisfying their interests
11 and satisfying the White House's interest. I'll walk
12 in with them. I haven't been in the office since --
13 obviously I was in the office for a short time the
14 night of the 20th -- I'll walk in. I'll go through
15 the documents. I'll see if there was a suicide note
16 or an extortion note. If I find one, I turn it over
17 to them. If I don't find one, I tell them I haven't
18 found one. And they're there, and I'll tell them
19 what I'm generally looking at.

20 That preserves privilege. We're not
21 showing them privileged documents. We're not going
22 to violate attorney-client privilege, or executive

1 privilege or anything like that. That does that, so
2 we preserve our institutional rights and the rights
3 of other people who have the privilege right. At the
4 same time, we give them the comfort that there is a
5 note or there isn't a note in the office. That
6 accommodates their interest. That's the way to do
7 it, I said.

8 Q And what did Mr. Burton say?

9 A Mr. Burton, I think, leaned toward
10 Mr. Quinn. They thought I was -- but I was the
11 fairly persuasive, too. I mean I made clear to them
12 all I was willing to listen to any one of them.
13 Fine. If McLarty wants to talk to me, fine. If
14 Burton wants to talk to me, fine. If they want to
15 bring Quinn into it, who I have great respect for,
16 also fine.

17 I was going to make this decision. We were
18 going to do it the way I thought was right. I was
19 willing to listen, but at the center of this thing at
20 this point, we had to respond to the request. These
21 people, I felt had legitimate needs and desires to
22 get into that office quickly, and I felt we had to

1 try to satisfy those needs and desires; at the same
2 time, protecting valid institutional and privilege
3 interests of the White House.

4 I felt like I came up with a way to do it.
5 They were uneasy about it. I understand that. I
6 just disagreed with it. And I told them that and I
7 told them we're going to do it my way.

8 Q Did you tell Mr. McLarty, Mr. Burton and
9 Mr. Quinn that the law enforcement people had said
10 what they were interested in looking for was a
11 suicide note or an extortion note?

12 A Yes.

13 Q And you put it to them that way?

14 A Suicide note, extortion note or something
15 similar to that. That's what we're looking for,
16 that's what the search was about.

17 Q And you told them a suicide note, an
18 extortion note or something similar to that?

19 A Something like that, right.

20 Q Did you indicate to them that the law
21 enforcement people wanted to look to see if there was
22 anything that might explain motivation on the part of

1 Mr. Foster to kill himself?

2 A No. Because to the extent that words like
3 "motivation" or "state of mind" were used in
4 conversations, I understood them to mean expressed
5 state of -- you know, an expression of intent to
6 commit suicide for certain reasons. It wasn't some
7 sort of generalized notion that you're being looking
8 for anything that could bear on a generalized state
9 of mind. It was specifically tied into the suicide
10 and tied into looking for a suicide note or an
11 extortion note.

12 Q Where was Mr. Margolis when you were having
13 this conversation with Mr. Quinn and Mr. McLarty and
14 Mr. Burton?

15 A I believe he was sitting either in my
16 office or in the waiting area in the White House.

17 Q So that's a very short distance away from
18 where you were having this meeting?

19 A Yes.

20 Q Did you ask him to come in and explain what
21 he was interested in getting at?

22 A No, no, I didn't.

186

1 Q Were you told why Mr. McLarty and
2 Mr. Burton called you in and expressed an interest or
3 a concern about how you were going to handle this?

4 A No, I wasn't told why. They were aware of
5 what was going on. Again, it's a small place, the
6 west wing, and we had law enforcement people in the
7 west wing. Everybody -- they just wanted to be
8 assured that the right thing was being done.

9 Q In that call you had with Susan Thomases on
10 that day, did you have a similar discussion about
11 whether the law enforcement people should be allowed
12 into the room?

13 A She just -- as I testified earlier -- I
14 testified to that conversation -- she didn't -- I
15 don't remember her specifically saying that. She
16 might have. I don't know. I just remember her
17 expressing the sort of same kind of thing as McLarty,
18 what are you doing? What's going on? What are you
19 doing and why are you doing it that way? Now, that's
20 what I remember her saying, and I responded to her in
21 the same way I responded, as I just did, to McLarty
22 and ultimately to Quinn and to the others.

1 This is what I'm doing, and this is the
2 reason I'm doing it. I'm trying to balance out
3 different, conflicting interests, and this is the
4 right way to do it, to go in with these people and to
5 do it that way.

6 Q At the time you had this conversation with
7 Mr. Quinn where he raised the option of simply
8 sending the law enforcement people away and doing the
9 review yourself and then submitting the results to
10 the Justice Department, hadn't Mr. Margolis already
11 said to you we're going, mail us the results?

12 A No, not to my memory.

13 Q Had Mr. Heymann said to you I'm going to
14 have Mr. Margolis and Mr. Adams come back. We'll do
15 it in a very low key way. We won't make a big fuss?
16 Hadn't that happened as of that point in time?

17 A Not to my memory.

18 Q Isn't it, in fact, you who told
19 Mr. Margolis and Mr. Heymann that you want to have
20 the Justice Department lawyers stay?

21 A I may have said that I wanted them to say,
22 but it wasn't -- I don't remember any threat to

1 leave.

2 Q When Mr. Margolis -- let me withdraw the
3 question and put it this way.

4 Do you remember saying to Mr. Margolis in a
5 discussion "I know this is for show"?

6 A Do I remember saying that to Mr. Margolis?

7 Q Or "I know it's for show"?

8 A No, I don't remember saying that to
9 Mr. Margolis.

10 MR. PEDOWITZ: Mike, could we take a brief
11 break.

12 (Recess.)

13 BY MR. CHERTOFF:

14 Q Did you tell Mr. Margolis and Mr. Adams to
15 stay in the lobby and not to leave after you finished
16 your conversation with him?

17 A I have no recollection of that.

18 Q Did there come a point where Mr. Margolis
19 walked outside and you went out after him to catch
20 him to make sure he wasn't leaving?

21 A I don't recall that either. God. God was
22 not on the record.

1 Q Did you have a second conversation with
2 Phil Heymann, if you remember, on the 22nd of July,
3 later in the morning or in the early afternoon?

4 MR. PEDOWITZ: Can I have that question
5 read back.

6 (The reporter read the record as requested.)

7 MR. PEDOWITZ: He said he doesn't recall
8 when the first one was, based on your question.

9 THE WITNESS: I don't remember a
10 conversation with Heymann in the afternoon. It's
11 possible. I just don't remember.

12 BY MR. CHERTOFF:

13 Q Did there come a point when you called
14 Mr. Margolis and Mr. Adams and you told them that you
15 wanted to begin this search of the office?

16 A Yes.

17 Q And in fact, they were over having lunch in
18 the Executive Office Building?

19 A That could be. That's right. That could
20 be.

21 Q And you told them it's settled, come on
22 over?

1 A I told them -- I was talking to people.
2 These conversations I described earlier and that
3 was -- I didn't want to begin to -- people wanted to
4 talk to me about it in the White House so I had to
5 talk to them about it. I couldn't begin until I
6 finished talking to them about it. When I finished
7 talking about it, I called -- I asked Margolis and
8 Adams and whoever else was with them, let's do the
9 search.

10 Q Who else did you talk to in the White
11 House, of White House personnel, besides Mr. McLarty,
12 Mr. Burton and Mr. Quinn?

13 A Neuwirth and Sloan. There may have been
14 others. I don't remember. I remember the McLarty,
15 Burton and Quinn conversations.

16 Q In the conversations you've had with White
17 House personnel about the alternatives that might be
18 followed, did you consider going forward with the
19 alternative of sending the law enforcement people
20 away and saying you would respond back with a
21 detailed inventory and privilege log?

22 A Well, when it was raised by Quinn, I

1 considered it.

2 Q And at that point in time, you were
3 familiar, from your experience, with the procedures
4 that are followed when outside lawyers are faced with
5 a request for documents; right?

6 A Yes, I am.

7 Q And in that situation, an outside lawyer,
8 for example, would Bates stamp the documents to have
9 a complete inventory of all the documents, for
10 example, in response to a request for production;
11 correct?

12 A Yes, that would happen in a litigation type
13 situation.

14 Q In a situation where there was a request
15 for documents and a subpoena, and there were
16 documents that were sought to be withheld on the
17 ground of privilege, you would provide a privilege
18 log that would identify the documents being withheld;
19 correct?

20 A Correct.

21 Q And it would characterize them in some way
22 and state the basis of the privilege; correct?

1 A Correct.

2 Q And that would be done document by
3 document; correct?

4 A Correct.

5 Q And then you would have a complete record
6 of all the documentation in the universe of material,
7 either by having a record of the Bates stamp numbers
8 or by having them on the privilege log?

9 A Maybe yes, maybe no. It depends on what
10 the request was. If the request was you produce
11 every document in Foster's office, if that's -- then
12 that would be the process followed. If the request
13 is you produce a suicide note or an extortion note,
14 then you might not have to go through all that.

15 You would not -- you might -- they might
16 say well, we don't just want to take your word. Now
17 we want a list of every document with respect to --
18 it depends on the give-and-take.

19 Q We're now talking about the --

20 A It wouldn't inevitably result in indexing
21 every document and logging every document. It
22 depends on what the request was. It depends on the

1 legitimacy of the request. It depends on a lot of
2 things.

3 Q Your testimony is Mr. Quinn raised the
4 possibility of this using the model of what would
5 happen on the outside?

6 A He did.

7 Q And I want to understand the model, of the
8 way it works on the outside with ordinary lawyers and
9 ordinary citizens, as you understood it at that point
10 in time.

11 A Depending on the scope of the request --

12 Q If an ordinary lawyer and ordinary citizen
13 were faced with a request by the law enforcement
14 agencies to come in and conduct a search to look for
15 relevant documents pertaining to a suicide, the
16 ordinary lawyer could say no, unless you have a
17 search warrant, you can't come in; correct?

18 A Yes, that could be.

19 Q If the agents or the police showed up with
20 a search warrant, they could then search; correct?

21 A They can search in accordance with the
22 scope of the search warrant.

1 Q And the private citizen or private lawyer
2 couldn't stop that; right?

3 A That's correct.

4 Q Then if there were issues concerning
5 particular privileged documents, depending on whether
6 they fell within the scope of the search warrant, you
7 would find some way to log them and identify them and
8 put them aside to be ruled on by a judge; correct?

9 A Correct.

10 Q If an ordinary citizen were in this
11 situation we're talking about and the authorities
12 wanted to issue a subpoena, they would serve a
13 subpoena upon the ordinary citizen; right?

14 A Correct.

15 Q And at that point, any destruction of
16 documents or placement of documents outside the
17 custody or control of the recipient of the subpoena
18 could constitute an obstruction of justice; correct?

19 A Perhaps. Depending on the circumstances,
20 it could.

21 Q If it was willful?

22 A It could constitute, under certain

1 circumstances, an obstruction of justice.

2 Q Under those circumstances, the authorities
3 could insist, if they wanted to, to get either the
4 documents themselves or an accounting of any
5 documents not being produced; correct?

6 A Perhaps.

7 Q That's the way it works with ordinary
8 citizens and private lawyers; right?

9 A Sometimes.

10 Q Could an ordinary citizen insist that the
11 FBI sit in a room while the ordinary citizen or
12 lawyer made a decision on the spot about what
13 documents would be sorted out?

14 A Yes.

15 Q You think the ordinary citizen could insist
16 that the FBI sit there?

17 A Could insist, ask, request and the FBI
18 either will or won't. I think the FBI probably would
19 if they thought there was a chance of going in the
20 room and sitting.

21 Q And see what they could spot?

22 A Seeing what -- they would see what was

1 being made available to them. I don't think the FBI
2 would storm out necessarily, it depends. It depends
3 on the circumstance. It depends on what they're
4 looking for. It depends on the relationship. It
5 depends on if there's some adversary proceeding. It
6 depends on a lot of circumstances.

7 Q In this particular case, did you want to
8 have the FBI and the Justice Department present when
9 you went through the review of the documents you were
10 going through?

11 A I wanted the FBI and the Justice Department
12 to be satisfied that we were conducting a good faith
13 search for a suicide note or an extortion note.
14 That's what they asked to do, and that's what I
15 wanted -- I understood that. It was mentioned from
16 the first briefing on July 21, you know, we want
17 to -- or shortly after that briefing. We want to
18 look in Foster's office for a suicide note.

19 It's a natural reaction for the FBI and the
20 Park Police to have, it's the reaction I had on July
21 20th. I wanted to assure -- I wanted them to go in
22 and see for themselves -- and I wanted to see because

1 my search was very cursory on the 20th -- if there
2 was a suicide note or extortion note, and I wanted to
3 satisfy them with respect to that. I thought that
4 was a legitimate interest and I wanted to satisfy
5 that legitimate interest.

6 Q You wanted to satisfy them that your search
7 was being conducted in an appropriate fashion?

8 A No. I wanted to satisfy our search. We
9 were searching for a suicide -- our search, we were
10 searching together for a suicide note or an extortion
11 note, and this was a way we could conduct our search.

12 Q At the time you went in with the law
13 enforcement authorities to begin going through the
14 documents in Mr. Foster's office, is it your
15 understanding that Mr. Margolis was happy with this
16 procedure you had in place?

17 A I didn't think he was happy with this
18 procedure. I think you're -- I thought he -- I
19 thought he thought law enforcement should have maybe
20 a little more of a role. But he recognized the
21 problem. He was sympathetic to the conundrum and
22 therefore, this first page discussions were made we

1 had, and therefore looking at -- file label
2 discussions we had.

3 Q At the time you went in, hadn't
4 Mr. Margolis repeatedly expressed his dissatisfaction
5 and his strong opposition to a procedure in which you
6 would make the determination about what would be
7 withheld and what would be turned over?

8 A I don't remember that happening.

9 Q Hadn't Mr. Heymann expressed his strong
10 opposition to the procedure you recommended or you
11 insisted upon in which you would make the decision
12 about what would be withheld and what would be turned
13 over?

14 A I don't remember that happening.

15 Q And wasn't it you who made the decision the
16 way this procedure was going to be conducted?

17 A That's correct.

18 Q At that point, you became in control of the
19 search; right?

20 A No. I made a decision, and I conducted the
21 search in the manner I sought to conduct it.

22 Q At that point, it became your

1 investigation; right?

2 A No, it didn't become my investigation.

3 Q At that point, it was your decision about
4 how the search would be carried out; right?

5 A It was my decision which was conveyed to
6 them and which they somewhat reluctantly agreed to.
7 They wanted more. They wanted more. Look at the
8 first page or something like that.

9 Q When you went into the office, you sat
10 behind Mr. Foster's desk; correct?

11 A For a time, not entirely.

12 Q Initially.

13 A More than initially. Maybe initially,
14 maybe --

15 Q And Mr. Sloan was behind you --

16 A Yes.

17 Q -- behind one shoulder, and Mr. Neuwirth
18 was behind you on the other shoulder; right?

19 A Yes.

20 Q And they were facing out into the room with
21 you; correct?

22 A Yes.

200

1 Q And Mr. Spafford, who's the Foster family's
2 private lawyer, was also present; right?

3 A Right.

4 Q Young man?

5 A I think so. I haven't seen him in a long
6 time.

7 Q And he was off to the side; correct?

8 A He may be old by now.

9 Q He was off to the side; correct?

10 A He was off to the side.

11 Q And Mr. Margolis and Mr. Adams were on the
12 opposite side of the desk; correct?

13 A Correct.

14 Q And the law enforcement people were on the
15 opposite side of the desk going back into the room;
16 correct?

17 A Correct.

18 Q And you went through the documents and you
19 picked up documents, and you characterized them in
20 certain ways; correct?

21 A Correct.

22 Q And you didn't show the documents to the

1 people, did you?

2 A Sometimes I did.

3 Q How many times did you do it?

4 A A few -- more than a few. At times I did.

5 At times I would -- at times I would say this is a
6 book on ethics regulations. Here, take a look -- not
7 a book, but a file on ethics because we had a lot of
8 ethics issues in the office. Here, take a look. It
9 says "ethics regulations" on the top.

10 I showed them the first page of that. I
11 would do that from time to time because I thought it
12 was a good way of doing it, to see it. Other times I
13 just described what I was looking at. That's the way
14 the search was conducted.

15 Q Is it fair to say that most of the time you
16 simply looked at the document yourself and
17 characterized in some way?

18 A The majority of the time, maybe the large
19 majority of the time but not always, not always.

20 Q And most of the time you characterized it
21 in a very general way?

22 A Yes.

1 Q Were there handwritten pieces of paper that
2 you ran across in this inventory or search?

3 A Yes. There were files that Foster had
4 which contained handwritten notes -- handwriting,
5 yellow pieces of paper or other pieces of paper with
6 handwriting on them.

7 Q Did you read those out?

8 A I looked at them. I glanced at a file. I
9 looked at a file. There was a file on ethics. I
10 would see a page listing some ethics regulations or
11 some comments with respect to ethics regulations.
12 I'd glance at them. Did I read every word on the
13 page, no. Did I glance at them, yes. I was looking
14 for a suicide note or extortion note.

15 Q You glanced at it. Did you read it out
16 loud?

17 A Did I read it out loud? No.

18 Q Did you open all the drawers?

19 A I believe I opened all the drawers, yes.

20 Q Was there a credenza or bookcase behind
21 Mr. Foster with some personal files?

22 A There was a credenza. Was it behind the

1 desk or was it to the side -- I don't remember
2 anymore, it's been almost two years -- but I did open
3 the credenza instead of looking through those files.

4 Q Did you remove the files?

5 A Some -- I believe I removed some and others
6 I didn't. With those I didn't I looked at and
7 described generally what they were.

8 Q Characterizing them --

9 A Characterizing them, yes.

10 Q As you thumbed through them?

11 A As I thumbed through them, yes.

12 Q During this process, did Mr. Margolis
13 continue to raise objections about the way you were
14 handling things?

15 MR. PEDOWITZ: We're talking about while
16 we're in the room --

17 BY MR. CHERTOFF:

18 Q The process of reviewing the documents in
19 the room. Did he continue to raise objections?

20 A I don't remember him doing that.

21 Q Did he indicate that at that point in time,
22 the possibility of foul play could not be excluded?

1 A I don't remember him -- I don't remember
2 him saying it. Is it possible? Yes, it's possible
3 he said it, but I don't remember him saying it.

4 Q In your understanding, to the extent that
5 foul play remains a possibility as of the state of
6 mind that people had at that point in time
7 admittedly, that the investigation was not only to
8 determine the course of a suicide but whether, in
9 fact, there was a crime that had been committed?

10 A I understood that the investigation had not
11 concluded there was a suicide, and consequently was
12 looking into other possibilities, including the
13 possibility of foul play. However, unlikely as it
14 may seem, but obviously you have to conduct an
15 investigation to make a final determination.

16 Q During the course of this process, did you
17 consult with Mr. Sloan and Mr. Neuwirth?

18 A As we were doing the search for the note?

19 Q Right.

20 A They were standing and watching it. I
21 don't know if I consulted with them in the presence
22 of the other law enforcement people. I don't

1 remember that. I may have turned and asked them a
2 question about it. Maybe there was a file they were
3 familiar with and asked them something about it, but
4 I don't remember that right now.

5 Q Was Mr. Burton there, by the way?

6 A Mr. Burton was there, yes.

7 Q Did Mr. Burton or Mr. Sloan or Mr. Neuwirth
8 come in and out of the office at points of time?

9 A They might have.

10 Q Did they bring anything with them at any
11 point in time?

12 A I don't remember.

13 Q Did you get up and move around the office?

14 A Yes.

15 Q Did you open drawers?

16 A Yes.

17 Q Did you pull files out?

18 A Yes.

19 Q Did you show those files to anybody in law
20 enforcement?

21 A I described them.

22 Q As you held them and read them?

1 A Yes, and sometimes I -- and I might have.

2 I remember sometimes showing a file. I was sort of
3 following a procedure where, every so often for a
4 change of pace, I would show them a file, just to
5 confirm what I was saying was accurate.

6 Q Was there a Dictaphone?

7 A Did I have a Dictaphone?

8 Q Was there a Dictaphone in the office?

9 A I'm not sure. I don't remember now.

10 Maybe.

11 Q Did anybody ask to have the tape listened
12 to?

13 A Tape of what?

14 Q What was in the Dictaphone, the tape in the
15 Dictaphone. Did anyone ask to have the tape listened
16 to?

17 A I don't remember.

18 MR. PEDOWITZ: Is your question was there a
19 tape on the Dictaphone?

20 BY MR. CHERTOFF:

21 Q I'm asking did anybody ask to have the
22 Dictaphone listened to?

1 A I don't remember that.

2 Q Was there a computer?

3 A Yes -- there was a computer in the office?

4 I don't remember if there's a computer in his
5 office. The secretary had a computer.

6 Q You don't remember whether anyone asked to
7 have the computer turned on?

8 A I remember something being asked with
9 respect to the computer. I do remember that.

10 Q To have it turned on?

11 A Perhaps.

12 Q Did you deny that request?

13 A No. I think I accepted some sort of
14 request that we would do something eventually with
15 respect to the computer. We would look -- what I
16 remember is they -- as the search went on, certain
17 requests were made for documents, and I created a
18 separate pile -- I heard those requests, and I
19 accepted those requests. I started making a pile of
20 documents. I said we would look at these later and
21 we'd make a determination with regard to --

22 Q Whether you would turn those over?

1 A Whether they're privileged or whether we
2 would exercise privilege.

3 Q You weren't making just a privilege
4 determination. You were also deciding whether you
5 would turn over unprivileged documents; correct?

6 A They made requests for certain documents --
7 they made requests for certain documents. I said we
8 would look at those documents, and we would make a
9 determination whether to turn them over. I was
10 thinking of privilege. This was a lawyer's office,
11 and I think privilege applied to many of the
12 documents, virtually all of the documents,
13 attorney-client, executive, work product. On the
14 other hand, maybe not to every single document.

15 In any event, I never had to reach the
16 decision, the final decision whether I really was
17 just deciding between privileged documents or not
18 privileged documents, because I decided -- or we
19 decided, when we had time to look at the documents,
20 that we would turn everything over that was
21 requested.

22 Q But when you went into that office, was it

1 your understanding that you were simply going to sort
2 through and withhold privileged documents or that you
3 were going to decide whether even unprivileged
4 documents would be turned over?

5 A No. I was looking -- the request was a
6 search to look for a suicide note or an extortion
7 note. I was conducting a search for a suicide note
8 or extortion note. I was not reviewing files to make
9 determinations whether they were privileged or not
10 privileged, whether it would be turned over or not
11 turned over.

12 No files were requested prior to that
13 search. Some documents were requested in the course
14 of the search, which I then put in a pile to give to
15 them. The search -- it was for do I see a suicide
16 note or an extortion note? That's what the search
17 was for. That is what we were doing in that office
18 that day.

19 Q Your understanding in your mind was that
20 you were not making a determination about whether
21 documents were simply privileged or unprivileged with
22 the notion being that the unprivileged documents

210

1 would be turned over. You were deciding whether
2 there were documents that would satisfy the
3 description of suicide note or extortion note?

4 A Correct.

5 Q And that is all that -- your testimony is
6 that's all that the law enforcement people wanted,
7 was to see if there's a suicide note or extortion
8 note in the files?

9 A That day -- that's correct. That was the
10 basic object of that search.

11 Q The purpose of having them sit there and
12 watch you search for a suicide note or an extortion
13 note was what?

14 A We were going in together. The office had
15 been secured, and their purpose was to see -- they
16 wanted to search for a suicide note or extortion
17 note.

18 Q But you didn't let them?

19 A I did let them. We did it together. I did
20 it. I searched in their presence.

21 Q You opened the drawers; right?

22 A I opened the drawers.

1 Q You looked at the documents?

2 A Correct.

3 Q You read them what you wanted to read them?

4 A Correct.

5 Q You characterized what you wanted to
6 characterize?

7 A Correct.

8 Q Your testimony is that all they wanted, as
9 you understood it, was an extortion note or a suicide
10 note?

11 A Or some similar such document. The
12 document we found, obviously the torn-up note in the
13 bottom of the briefcase, is a classic example of what
14 some similar such document would be. It is not
15 clearly a suicide note, it is not an extortion note,
16 but it's something that directly reflects on his
17 state of mind and consequently, was turned over when
18 it was found. That's the kind of thing we were
19 looking for. A suicide note or an extortion note or
20 some similar such document.

21 Q But your understanding is that they wanted
22 to rely upon your judgment about what kinds of

1 documents would be relevant for them to look at?

2 A Look. If they had their preference -- they
3 understood my privileged concerns. They're lawyers,
4 some of them and they were sensitive, and they
5 understood what I was doing. If they had their
6 preference, we want to do it, we'll look, we want to
7 look, we'd rather do it ourselves rather than have
8 you do it. I said hey, this is a lawyer's office.
9 We can't do it like that.

10 On the other hand, you have a legitimate
11 desire to look for a suicide note or extortion note.
12 This is the way we'll do it: we'll do it together. I
13 will do it. I'll look. If I find a suicide note or
14 extortion note, unless I'm fooling you, unless I'm
15 reading one in front of it and saying this concerns
16 Supreme Court nominees but it's really a suicide
17 note, I could have done that maybe, razzle-dazzle,
18 but I didn't.

19 Q But if there's a document --

20 A That was the nature of the search.

21 Q I want to get to this point. The point is
22 you were not merely subtracting privileged documents

1 and leaving the rest for some future occasion for the
2 agents to go through to see if there's anything that
3 would bear on the state of mind of the victim;
4 correct? Am I correct?

5 A There was no request for us to examine the
6 files -- we want all files, produce all files of
7 Foster's office so we can go through it, not on that
8 day nor actually on any day, until very recently.

9 Q When you characterized the various files,
10 did you mention that there was a file involving
11 Whitewater in there?

12 A What I recall with respect to that is at
13 one point coming across a series of Clinton personal
14 files, and I recall saying these are Clinton personal
15 files. I wanted to give them a sense of what was in
16 the office. They wanted a sense, in the course of a
17 suicide note or extortion note. I said these are
18 Clinton personal files and I looked through them.

19 I started looking at them. I wasn't
20 familiar with them. Vince had been working on this
21 stuff. I said they involve financial stuff, tax
22 returns, real estate investments, things like that.

1 And I would look, as I passed these files, I would
2 point out the files to them, and we just passed over
3 them.

4 Q When you say "point out the files to them,"
5 what do you mean?

6 A Here, these are the personal files.

7 Q You held them up in a group?

8 A I don't remember holding them up in a
9 group. I remember opening drawers -- opening
10 credenza drawers actually and pointing them out.
11 Some I might have pulled out and held up and some I
12 didn't.

13 Q Did you look to see if there were
14 handwritten notes in the Clinton personal files?

15 A I flipped through the files to see, not so
16 much if there was a suicide note or extortion note
17 but you start looking through those things rapidly,
18 you're not likely to find something stuck in a file
19 like that but who knows?

20 My job was to see if it was there, and so
21 I'd open a file, see handwritten notes. I'd glance
22 at it and see it relates to the file. No suicide

1 note, no extortion note. I'd close the file, put it
2 back and go on.

3 Q Were there, in fact, a substantial number
4 of handwritten notes in the Clinton personal files?
5 I mean in Vince Foster's handwriting.

6 A I don't remember.

7 Q You recognized his handwriting?

8 A I recognized his handwriting.

9 Q Would you agree with me that handwritten
10 notes that might express his own feelings about
11 something would be something that might bear some
12 closer looking at?

13 A Only if they would look like there were a
14 suicide note or an extortion note. A handwritten
15 item, which I glanced at, discussing ethics
16 regulations doesn't require a closer examination. A
17 handwritten item, such as that which was eventually
18 discovered at the bottom of the briefcase, would
19 require closer examination.

20 Q Suppose it expressed concerns about
21 something or anxieties about something, you don't
22 think that's something they'd want to look at?

1 A If none of it is part of a file. This is a
2 lawyer's office. I mean, a lawyer would make notes
3 with respect to various legal theories or things like
4 that. No, if it's a part of a file -- if it's not a
5 suicide note or extortion note --

6 Q And that was your touchstone in the
7 analysis, in your mind, as to what you would consider
8 something worth identifying and showing, if you ran
9 across it, was a suicide note or extortion note?

10 A Or something similar.

11 Q Well, if the something similar is the part
12 that could cover a very little piece or a very large
13 piece.

14 A No. It covers the proper piece.

15 Q In your mind, you were making the decision
16 about those items that you felt you should bring to
17 the attention of Mr. Margolis and Mr. Adams and the
18 rest of the law enforcement people?

19 A It was not a lot of discretion. I mean, it
20 was a suicide note or extortion note or something
21 similar. Something similar is fairly clear. And we
22 have, as I've mentioned five times --

1 Q I want your state of mind --

2 A That was my state of mind. My state of
3 mind, I was looking for a suicide note or an
4 extortion note or something similar. If you want to
5 know what something similar is, look at what we
6 ultimately found on Tuesday the 26th, or Monday the
7 26th.

8 Q Did you unpack the trash?

9 A I believe the trash was turned over on the
10 top of the desk.

11 Q Turned over to who?

12 A Unpacked.

13 Q And spread out on the desk?

14 A Maybe I'm wrong about that. I have a vague
15 memory of looking through the trash.

16 Q Did you look in the burn bag?

17 A If there was a burn bag there, I would
18 probably have looked through the burn bag. We did
19 look through the burn bag, if there was a burn bag
20 there. I just don't remember it.

21 Q Did an agent stand up during the course of
22 the search?

1 A A number of agents were standing during the
2 course of the search.

3 Q Did one of your associate counsel make a
4 comment about that?

5 A Yes.

6 Q What was the comment?

7 A He's -- I think some FBI agent in the back
8 of the room, he's looking -- Cliff Sloan said he's
9 looking at the files or something like that. I said
10 stop that. I chastised him, my associate, and I
11 think I made him apologize or something.

12 MR. ZIMROTH: Chastised who?

13 THE WITNESS: My associate. Not the FBI
14 agent.

15 BY MR. CHERTOFF:

16 Q Let me go through it step by step.
17 Mr. Sloan stood up and he said something to the
18 effect of indicating an agent -- he's looking at the
19 files?

20 A Yeah, he's looking at some files on the
21 desk.

22 Q And did the agent say something like let's

1 not get carried away here?

2 A That could be.

3 Q And then did you have to chastise Mr. Sloan
4 after having made what in effect was a rude
5 statement?

6 A Yes.

7 Q Is that indicative in your mind that the
8 tenor of this proceeding was a nonadversary type
9 procedure or that it was in fact was an adversary
10 type procedure?

11 A It was a nonadversary type procedure. That
12 wasn't indicative of anything, except an inadvertent
13 and not wise remark.

14 Q Did anybody, to your knowledge, go out to
15 receive phone calls, any of your White House people
16 who were in the room?

17 A I don't know. It's possible.

18 Q Did anybody report back to you on any of
19 the phone calls they received?

20 A I don't remember. It went on for a couple
21 of hours so it's unlikely everybody stayed in place
22 for the hours except for me.

1 Q It was about an hour and a quarter
2 actually, wasn't it?

3 A If I had to guess, I would have said two,
4 2-1/2 hours but it could have been an hour and a
5 quarter. I would say closer to two hours.

6 Q Now, Mr. Foster had a couple of briefcases,
7 didn't he?

8 A I only remember one. There may have been
9 others, but I only remember one.

10 Q And the one you remember looked like what?
11 Describe it.

12 A Like an accordion kind of briefcase, like
13 that one over there.

14 Q It doesn't do any good for the record to
15 indicate somebody's briefcase unless we're going to
16 attach it to the deposition.

17 MR. ZIMROTH: I hope you're not going to
18 attach it because it's mine.

19 BY MR. CHERTOFF:

20 Q Is it the kind of briefcase that
21 essentially opens up at the top and you can look
22 inside it, and it's not fastened at the top, you just

1 pull it apart and it opens up?

2 A That's correct.

3 Q Did you pick the briefcase up to look
4 inside it?

5 A What I recall is the briefcase was against
6 the wall. I reach back. I pulled it to the side of
7 me, next to the chair I was sitting in, Vince's chair
8 behind Vince's desk. I saw files in it, I reached
9 in, and I pulled out all the files from the
10 briefcase, and I said okay, this is his briefcase.
11 Apparently these are the files in the briefcase. I
12 looked at them. I described the files, and in some
13 general way, and I put them down, and that's what I
14 remember. Then I think I just moved the briefcase
15 back.

16 Q Was the briefcase empty?

17 A I believe I had emptied the briefcase of
18 all the files. I don't remember seeing anything else
19 in the briefcase. I didn't see scraps of paper. I
20 don't remember seeing scraps of paper in the bottom
21 of the briefcase but I didn't necessarily look at the
22 bottom of the briefcase. By reaching in, I felt I

1 had emptied the briefcase of all its files.

2 Q You were looking for a note, weren't you?
3 Wasn't that what you were looking for?

4 A Yes.

5 Q Like a note that would come in a small
6 envelope?

7 A Yes.

8 Q Didn't you want to check inside the
9 briefcase to see if there was a note?

10 A I thought I had emptied the briefcase. I
11 don't remember looking to the bottom of the
12 briefcase. I may have looked at the bottom of the
13 briefcase and I just don't remember. I'm not saying
14 I didn't look at the bottom of the briefcase. I
15 probably did look at the bottom of the briefcase.

16 Q After all, as you've testified repeatedly
17 here, the thing you were looking for was a suicide
18 note or an extortion?

19 A I got that across, yes.

20 Q And that might include a letter that might
21 be in a letter-sized envelope; right?

22 A That's correct.

1 Q That's something you wouldn't pick up if
2 you reached in to pick up a group of files?

3 A What I did is when I reach in to pick up, I
4 glanced -- after I picked it up, I glanced down at
5 the briefcase and I didn't see anything like --
6 anything else that I thought I should pick up. I
7 don't remember seeing little scraps of paper. I'm
8 not -- I must tell you if I saw little scraps of
9 paper, I'm not sure I would have done anything at
10 that point. I don't remember seeing any scraps of
11 paper.

12 Q Were you in a rush to get the agents out of
13 the office?

14 A No, I was not.

15 Q You didn't have an appointment later or
16 something?

17 A No, I did not.

18 Q Or anything you needed to do afterwards?

19 A No.

20 Q And how many times did you have to go into
21 the briefcase to pull the files out? Was it all the
22 files in one motion or did you have to go back

1 several times?

2 A I don't remember. I just don't remember.
3 It may have been in one motion. It may have been two
4 motions, but it was something like that. Then I
5 glanced down to see that I have everything, saw
6 nothing else that should be pulled out, and described
7 the files and went on.

8 Q Did you make any attempt while this process
9 was going on to have what you were doing inventoried?

10 A No.

11 Q Or indexed?

12 A No.

13 Q Did you know Mr. Sloan was making little
14 notes about what you were saying?

15 A No, I did not know that. I discovered that
16 later but I did not know it at the time.

17 Q Did you know Mr. Spafford made little notes
18 of what you were saying?

19 A I didn't know that either.

20 Q But wholly apart from what people were
21 writing down, based on what you were saying, you
22 didn't have anyone in there who was actually

1 physically going through the documents and logging
2 them --

3 A No.

4 Q -- or keeping any kind of record?

5 A No, the purpose was to search for a suicide
6 note or extortion note. It was not to log and index
7 all the files in Vince Foster's office.

8 Q As this drew to a conclusion, did you have
9 any further conversation with Mr. Margolis concerning
10 the procedures you were just undertaking?

11 A I don't recall any.

12 Q Did Mr. Margolis say to you that if this
13 were IBM, he'd have subpoenaed all these documents?

14 A I don't recall him saying that.

15 Q Was he angry at the end of this process?

16 A I don't -- this is some source of
17 contention maybe but I don't recall him being angry
18 at the end of the process.

19 Q Did you say to Mr. Margolis if this were
20 IBM, a smart lawyer would have removed the documents
21 and asserted privilege would have attached?

22 A Did I say that?

1 Q Yes.

2 A I don't remember saying that.

3 MR. BEN-VENISTE: I didn't get the last
4 part of what you said.

5 MR. PEDOWITZ: Maybe you can read it again
6 because it didn't sound like English.

7 MR. CHERTOFF: Let's get it reread.

8 THE WITNESS: Then maybe I said it.

9 MR. CHERTOFF: I'll rephrase it this way.

10 BY MR. CHERTOFF:

11 Q Did you say to Mr. Margolis in substance
12 that if this were IBM, a smart lawyer would have
13 removed them, meaning the documents, and the
14 privilege would have attached?

15 A I don't remember saying that.

16 Q Was there discussion about having an
17 inventory prepared of the documents at any point with
18 Mr. Margolis in this process?

19 A I don't remember any such discussion.

20 Q Did Mr. Margolis ask you to keep the room
21 secured or the office secured after this process of
22 reviewing them was completed?

1 A I don't believe so. I think not.

2 Q And it follows, therefore, you didn't
3 refuse to do that?

4 A That's correct.

5 (Pause.)

6 MR. PEDOWITZ: Do you want to take a break
7 for a minute, Mike?

8 MR. CHERTOFF: No, that's fine.

9 BY MR. CHERTOFF:

10 Q At the conclusion of this process, did
11 someone raise the possibility of the documents that
12 were Mr. Foster's own personal documents going back
13 with the Foster family lawyer?

14 A Yes, that issue was raised. I believe it
15 was raised prior to the conclusion of the process,
16 although it may have been at the conclusion of the
17 process, because one category of documents we were
18 coming across as we were conducting the search was
19 Foster personal documents.

20 Q And you were separating those in a separate
21 file?

22 A That's correct.

1 Q And there were another pile of documents
2 that you believe the Park Police might want to look
3 at eventually?

4 A They requested -- like, for example, the
5 one I remember is saying this is -- I would pick up a
6 document on his desk and say this is a telephone log
7 listing, and they said oh, you know, we want to see
8 telephone logs. And I said well, all right, it's not
9 a suicide note or extortion note. Let me put it
10 aside and I will --

11 Q Address it later?

12 A I'll address it later on. Then other
13 things would come up like that or similar to that,
14 and I'd say all right, all right, we'll put it in.

15 Q And there was a third pile; right?

16 A The third pile was just working files -- I
17 don't remember what the third pile was at this
18 point. I remember most of the documents in the
19 office were just Foster working files, White House
20 counsel's office working files and I would just pile
21 them up, too.

22 Q As to the category of Foster personal

1 documents, at some point in time the question was
2 raised about giving them to the Foster lawyer?

3 A Correct.

4 Q And ultimately the law enforcement
5 personnel did not object to that; correct?

6 A That's correct.

7 Q And they agreed that they would deal with
8 the Foster lawyer personally afterwards to look at
9 those; right?

10 A I made that suggestion, I believe.

11 Q And they agreed to that?

12 A They agreed to that suggestion.

13 Q There came a point where the law
14 enforcement people went outside to wait, and you were
15 going to turn those documents over to Mr. Spafford;
16 correct?

17 A What I remember -- well, that's possible,
18 too. I don't want to say --

19 Q What do you remember?

20 A What I remember is after piling it up
21 because I was running across a fair amount of it, of
22 his personal documents, leases, insurance policies,

1 things like that, I believe, were starting to pile
2 up. I remember saying look, if there comes a time
3 when you want to look at any of these documents, you
4 should talk to Foster's personal lawyer so what I'm
5 going to do or what I suggest I do is give it to them
6 and you can start with them. And I did that in their
7 presence.

8 Q Now, there was a point where they were
9 leaving the room and Mr. Spafford was in the room,
10 Mr. Foster's office, with you; right?

11 A That could be. I don't really remember
12 that. I guess at the end of the search you're
13 talking about?

14 Q Right.

15 A It's possible that Spafford didn't walk out
16 with the rest. It's possible he stayed a little
17 behind as they walked out.

18 Q At that point in time, thereabouts, give or
19 take a few minutes, did Mr. Sloan say to you in a
20 very low voice that he had seen scraps of paper in
21 Mr. Foster's briefcase?

22 A No.

1 Q And did you say to Mr. Sloan in substance
2 well, we'll deal with that later or we'll look at it
3 later?

4 A I remember no such conversation. I
5 remember no such conversation, and I believe if such
6 a conversation would have taken place, it's a
7 conversation I would likely remember. But I remember
8 no such conversation.

9 Q With anybody on the 22nd of July in that
10 room?

11 A About scraps of paper at the bottom of the
12 briefcase, that's correct.

13 MR. PEDOWITZ: Is this a good time for a
14 short break?

15 MR. CHERTOFF: Yes.

16 (Recess.)

17 BY MR. CHERTOFF:

18 Q Now, once the law enforcement people left
19 Mr. Foster's office, did you lock Mr. Foster's
20 office?

21 A I don't think so.

22 Q And what did you do next with respect to

1 Mr. Foster's office?

2 A Let's see. I had handed the documents --
3 the Foster personal documents to Mr. Spafford with
4 the agreement of the law enforcement people, and he
5 left. I believe the search was over. We did not
6 find a suicide note or an extortion note, and I, at
7 some point thereafter, asked to see Maggie Williams.

8 I asked her to come in. I don't know if I
9 did it directly or asked Neuwirth or Sloan to get
10 her. I don't remember because I was anxious to get
11 on with the work of the office. I asked Maggie
12 Williams to select with me the Clinton personal files
13 so we could deal with the Clinton personal files like
14 we did with the Foster personal files, which is to
15 send them to the Clintons and their personal lawyers.

16 Q Why did you decide to do it at that point?

17 A I had just done it with the Foster files.
18 The search was over. There was no extortion or
19 suicide note. I was anxious to get on with the work
20 of the office. Indeed, actually even before I -- I
21 think I even asked to see Maggie, I told Neuwirth
22 that Steve, I want to assign the working files of the

1 office to other lawyers. And look, when we get back
2 from the funeral, I want you to prepare an inventory
3 of these files. I want you to pack up the rest of
4 Foster's personal stuff and send it to the family's
5 personal lawyer because there were some pictures and
6 wall hangings and stuff like that.

7 I want you to inventory the files and what
8 files were in the office -- we went through them but
9 we weren't writing them down -- so I could send them
10 to the other lawyers so the work of the office can go
11 on, and he said he could do that when he got back, he
12 couldn't do it that night -- we were going to leave
13 the next morning, early, for Little Rock and
14 everybody was still in a state of depression --
15 because that would take some time. And part of that
16 process, the natural process, having gotten the
17 Foster personal files out now, we'll get the Clinton
18 personal files out, let them go to their lawyers or
19 to the Clintons and any lawyer they select.

20 I said to Maggie, you should check with the
21 Clintons. They probably would want to send these
22 files to Bob Barnett, who I think has been working

1 with Vince on some of this stuff, but you check with
2 them. You just take the files and we'll send it out.

3 Q Let me ask you a question. As of the point
4 that the law enforcement people left, not all of
5 Mr. Foster's personal files had been segregated;
6 right?

7 A Not all? Perhaps not all, but virtually
8 all. At least all that I ran across.

9 Q And that was part of the process you were
10 going through; right?

11 A Yes.

12 Q As to those that were already separated
13 out, you gave them to Spafford?

14 A That's correct.

15 Q And you told Neuwirth, in the course of his
16 inventory when he got back the next week, he should
17 identify any further Foster personal papers and in
18 the next week he could get that to the Foster family;
19 right? Correct?

20 A If there were any more Foster personal
21 files. I knew there were Foster personal items, wall
22 hangings, things like that.

1 Q But that could wait until the next Monday?

2 A The wall hangings could wait.

3 Q And any other personal files?

4 A If there were other personal files I didn't
5 see, that could wait.

6 Q And you put off the inventory until the
7 next Monday?

8 A I put off the inventory until the next
9 Monday because it was an extensive thing to do.

10 Q Had you separated out the Clinton personal
11 files at this point in time?

12 A I hadn't separated them out but in going
13 through the search, I saw they were in one discrete
14 place -- at least I believed they were in one
15 discrete place -- in a drawer at the bottom -- in the
16 credenza.

17 Q And what made you believe that?

18 A Because as I was going through, I saw tax
19 returns, investment files, real estate files. I saw
20 them --

21 MR. CHERTOFF: Can we go off the record for
22 a second.

1 (Discussion off the record.)

2 (Recess.)

3 BY MR. CHERTOFF:

4 Q Let me direct your attention again back to
5 the afternoon of the 22nd after the law enforcement
6 people left. Now, at that point in time, did you
7 direct Mr. Neuwirth and Mr. Burton to try to get
8 ahold of Ms. Williams?

9 A I didn't mention Mr. Burton, but it's
10 possible that I asked Mr. Burton to get ahold of
11 Ms. Williams, but I think I asked -- I don't know who
12 I asked. I asked somebody to get ahold of
13 Ms. Williams.

14 Q Did there come a point in time where you
15 called Ms. Williams?

16 A I don't remember calling Ms. Williams. I
17 remember Ms. Williams being in the office with me but
18 I don't remember calling Ms. Williams.

19 Q In the period of time between when the law
20 enforcement people left and the time Ms. Williams
21 came, what did you do?

22 A I don't have any memory of what I did.

1 Q And Ms. Williams came in and what did you
2 say to her?

3 A I said the search is over, we didn't find a
4 suicide note or an extortion note. I came across --
5 I came across Clinton personal files, which I
6 understood would be in the office and those are files
7 we should send back to the Clintons or their personal
8 attorneys, their personal file to the Clintons. I
9 sent the personal files to his family's personal
10 attorney. Let's get the Clintons' personal
11 attorneys.

12 I don't know who they'll use for these
13 matters, probably Bob Barnett with Williams &
14 Connolly. You help me get these files out and you
15 take them and we'll go on with the work in the
16 office.

17 Q And how long did this conversation take?

18 A How long did it take?

19 Q Yes.

20 A A short time.

21 Q Then what did you do?

22 A Then together Maggie and I started looking

1 to try to select -- making sure we took out Clinton
2 personal files rather than any other files.

3 Q And where did you look?

4 A Primarily in the credenza. I don't think
5 we looked very many other places, if we looked in any
6 other place at all. We looked in the credenza
7 primarily. We identified together files which
8 appeared to be, and which were, Clinton personal
9 files, investments, taxes and the like, and they were
10 put into a box -- I don't remember who put them into
11 the box -- and they were taken out of the office.

12 Q Who took them out?

13 A I don't remember who took them out. I
14 remember just -- I don't remember. It could be Tom
15 Castleton. I have some recollection of -- he's the
16 kid who worked in our office -- calling somebody to
17 help Maggie take them. I didn't carry them out, and
18 I don't think Maggie herself carried them out,
19 although it's possible she did carry some of them
20 out.

21 Q What was your understanding of where they
22 were going?

1 A I'm trying to think what I knew at that
2 time. Obviously, I presumed they were going to the
3 residence, and I think Maggie and I probably
4 discussed that. That's the most likely, send them to
5 the residence and talk to the Clintons and they will
6 be sent from the residence on to their personal
7 attorneys.

8 Q What was the discussion about putting them
9 in the residence?

10 A Simply take the files, give them to the
11 Clintons, which means give them to the Clintons in
12 their residence. The Clintons weren't there --
13 Hillary wasn't there.

14 Q The President was there?

15 A The President was there.

16 Q You didn't call the President and talk to
17 him about this?

18 A No. And when you get instructions from
19 them as to which personal attorney, although it's
20 probably going to be Williams & Connolly, we'll send
21 it over to Williams & Connolly.

22 Q What did she say?

1 A She said okay, fine.

2 Q While you two were present in there, did
3 either of you make any calls to either the President
4 or the First Lady to get some further direction?

5 A No.

6 Q Did Ms. Williams make any calls to execute
7 the arrangement?

8 A I don't think so, other than -- let me take
9 that back. I don't know.

10 Q In your presence?

11 A Oh, in my presence?

12 Q Yes.

13 A I don't have any memory of any such calls
14 in my presence.

15 Q And then you were with her until someone
16 came and picked up the boxes and took them out?

17 A We may have been walking in and out. This
18 was not like the search where we're all together for
19 an hour or two hours. This is Maggie walks in.
20 Let's do this, Maggie. We start doing it. I may
21 walk out to take a call. We complete doing it, but
22 it was done relatively promptly.

1 Q How long did this process of going through
2 the documents with Maggie Williams take?

3 A My best guess -- it's a guess because I
4 don't remember -- it wasn't lengthy, less than a half
5 hour. They were fairly easily identifiable. It was
6 a limited number of files. It was not a large amount
7 of files.

8 Q And both of you went through this process
9 of identifying them?

10 A Yes.

11 Q Did Maggie Williams go and inspect certain
12 files herself and pull them out?

13 A She might have. That's possible.

14 Q And during the period of time you were
15 there, you have no knowledge or recollection of her
16 making any telephone calls?

17 A I have no knowledge or recollection. It
18 doesn't mean she didn't do it, but I have no
19 knowledge or recollection.

20 Q The next day you all were planning to go to
21 the funeral in Little Rock?

22 A That's correct.

1 Q You were going to leave with the President
2 in the morning on Air Force 1?

3 A Early, yes.

4 Q And come back the same night; right?

5 A We weren't sure we were going to come back
6 the same day, but it did turn out we came back the
7 same day.

8 Q These plans were in the process of being
9 firmed up during the 22nd?

10 A That's right.

11 Q As of the time you had Maggie Williams come
12 in, you understood that early in the morning on the
13 next day, the two of you were going to be going out
14 to Arkansas for the funeral; right?

15 A Yes, or at least -- I wasn't positive. I
16 mean, those plans were being firmed up during the
17 day. I'm not sure I was absolutely positive when
18 Maggie was in. Obviously sometime during that day, I
19 became positive, but at what time, I don't
20 recollect. I knew it was highly likely we would be
21 going the next day, and early the next day.

22 Q Did you know, from your discussions with

1 Maggie Williams, that she was involved in the process
2 of helping to put together the manifest and working
3 out the arrangements?

4 A It doesn't surprise me.

5 Q Did you ask her whether she had had any
6 conversations with Mrs. Clinton that day?

7 A No -- did I ask if she had any
8 conversations with Mrs. Clinton?

9 Q Yes.

10 A I don't remember if I asked her if she had
11 any conversations with Mrs. Clinton.

12 Q At the time that you and Ms. Williams went
13 through the documents, you didn't know which lawyer
14 was going to wind up taking the documents; right?

15 A That's right. I wasn't positive.

16 Q And Maggie Williams certainly didn't tell
17 you she had any knowledge of that; right?

18 A I don't recall her saying that she had any
19 knowledge of that.

20 Q And you didn't call Bob Barnett?

21 A No, I didn't call Bob Barnett.

22 Q These are documents that you previously

1 characterized as kind of partly official?

2 A Well, they're personal files, but we were
3 using them for official purposes.

4 Q Like the blind trust?

5 A Correct.

6 Q Like the personal disclosure forms?

7 A Correct.

8 Q And the taxes?

9 A Right.

10 Q And it was your understanding, at this
11 point in time, that the White House counsel's office
12 was no longer going to be involved in handling this
13 for the President?

14 A That at least -- it was my understanding --
15 it was my determination -- it was more than my
16 understanding -- when I saw these files, I knew from
17 having talked to Vince and from how the office was
18 proceeding, how the matters were proceeding, that
19 these matters were at an end or virtually at an end.
20 The tax returns had been filed. The financial
21 disclosure forms had been completed. The blind trust
22 was virtually had been done.

1 I know Vince had been telling me this stuff
2 is coming to an end so I knew, number one, what we
3 needed these files for was over, almost totally over;
4 and number two, Vince was the one who was -- the only
5 one in our office who was familiar with these
6 matters. He had been working with outside lawyers
7 and accountants, particularly, I thought, Bob
8 Barnett, and they were the repository of knowledge.

9 We no longer had any significant knowledge
10 because with Vince's death, he was the one with the
11 relationship, he was the one with the knowledge. And
12 therefore, to the extent that any work had to be
13 done, on these matters, it was -- we didn't have the
14 capacity -- not the capacity -- it was not likely
15 that we would have to do it with the loss of Vince.
16 So there was no point in holding on to the Clinton
17 personal files at that particular point in time.

18 Q This was a decision that you made on the
19 spot?

20 A These are my thoughts at the time as to why
21 it wasn't necessary for us to have these files any
22 longer.

1 Q Did you know at that point in time that the
2 White House counsel's office would no longer be
3 working on personal disclosure forms?

4 A It might work on personal disclosure forms
5 in future years and if, in fact, we had to assist
6 lawyers on the outside, we would. We didn't have any
7 need anymore for these files.

8 Q When you are doing your future year
9 personal disclosure forms, don't you want to have
10 your previous ones?

11 A The bulk of the work was not going to be
12 done by us with respect to future ones. The bulk of
13 the work now was going to be -- we would assist, but
14 the bulk -- with Vince gone and with his knowledge
15 gone, with Barnett the repository of knowledge with
16 respect to personal matters, we were no longer going
17 to have the same major role with respect to these
18 matters that we had in the past.

19 Q Was this a determination that you made? In
20 other words, you made a decision that you felt from
21 this point on the White House counsel's office would
22 not be involved in doing this?

1 A Would not have a significant role anymore.

2 Q And that was because of some feeling you
3 had about a decision you wanted to make as White
4 House counsel?

5 A Well, it was logical. It was sensible.
6 Vince was gone. He was the one who knew about this
7 stuff, and the particular matters that he had been
8 working on were over. And Bob Barnett was the one --
9 was the only other person in the world who knew as
10 much, if not more, than Vince about this stuff and
11 it's logical the stuff goes to him, if that's what
12 the Clintons want. I wasn't going to make a
13 determination that it go to Barnett. That's up to
14 the Clintons to make.

15 Q Didn't the files include files on the '93
16 Clinton taxes?

17 A Yes -- I shouldn't say yes. I'm not sure.
18 I don't remember at this point. The '93 --

19 Q I'll represent to you --

20 MR. BEN-VENISTE: '93? It was '93.

21 MR. CHERTOFF: The '93 taxes were to be
22 filed in '94; correct?

1 THE WITNESS: I understand what you're
2 saying. I thought you said the tax return --

3 BY MR. CHERTOFF:

4 Q The file for the '93 Clinton files, that's
5 due to be filed in '94?

6 A That's correct.

7 Q And I suppose if there are any estimated
8 taxes, that has to be filed quarterly; right?

9 A Yes.

10 Q So that would be something that Mr. Foster
11 had that would be an ongoing issue?

12 A That's correct.

13 Q And it's not your testimony that you felt
14 there was anything improper in the White House
15 counsel's office working on the matter?

16 A That's right.

17 Q So you weren't making a determination here
18 that as a matter of what's appropriate for the White
19 House counsel's office, you didn't want to do this
20 anymore?

21 A That's correct.

22 Q Did you talk to the client?

1 A Did I talk to the client? No, I did not
2 talk to the client. I made the decision.

3 Q Didn't you feel --

4 A I'm running the White House counsel's
5 office.

6 Q If the Clintons had said to you no, we
7 prefer -- let me ask this, Mr. Nussbaum.

8 A I didn't say anything. I shook my head.

9 Q If the Clintons were to say to you we
10 prefer to have your office continue to handle the
11 personal disclosure forms or continue to handle the
12 taxes or continue to follow the blind trust, you
13 would have honored that?

14 A If they would have said that, of course I
15 would have honored that.

16 Q In fact, up to the point in time of the
17 22nd when you had Maggie Williams in, your office
18 had, in fact, continued to work on this?

19 A Because Vince Foster was alive.

20 Q And you knew that Mr. Foster was spending a
21 fair amount of time working on it?

22 A Some time on it.

1 Q It didn't seem to you, before you made a
2 decision to move them out of the White House
3 counsel's office, that you would want to consult with
4 either Mrs. Clinton or the President?

5 A No, because this is a judgment for me to
6 make. I'm the one who decides, subject to them
7 obviously, what the White House counsel's office is
8 able to do. This is a judgment of how my office
9 should run. They wouldn't overrule that judgment.
10 They wouldn't say to me after the files got back,
11 Bernie, we want you to continue or -- they could
12 always do that. They're not going to do that.

13 If I make the judgment that, with Vince
14 gone and with the repository of knowledge in Bob
15 Barnett or other outside lawyers and accountants,
16 they're not going to overrule that judgment, and they
17 wouldn't overrule that judgment. This is my
18 relationship with them. I know how they react. If I
19 don't think the files have to be -- it's appropriate
20 for them to be in our office, it's unlikely they
21 would overrule that judgment but if they did, they
22 can in the future.

1 Q Did you make a judgment it was
2 inappropriate to be in the office?

3 A No, it wasn't inappropriate -- in a working
4 sense. I don't mean in a legal sense. If I used the
5 word "inappropriate," I did not mean it was
6 inappropriate in any legal sense to be in the
7 office. I mean, it was a judgment about what should
8 be in the office from a working point of view. With
9 Vince gone, there was no reason for these documents
10 to be in our office.

11 Q Were there personal disclosure forms -- I
12 guess they're called 278s -- for other members of the
13 White House official family that were in the White
14 House counsel's office? When I say "official
15 family," I mean the senior level personnel.

16 MR. PEDOWITZ: Could you ask that question
17 again or just have it reread.

18 (The reporter read the record as requested.)

19 MR. PEDOWITZ: In Vince's office?

20 MR. CHERTOFF: In the White House counsel's
21 suite.

22 BY MR. CHERTOFF:

1 Q Did you maintain personal disclosure forms
2 for other senior members of the White House staff?

3 A We may have had copies of those files, but
4 we didn't fill out the disclosure forms or assist
5 other senior White House -- well, no --

6 Q You didn't assist other senior White House
7 personnel with handling the personal disclosure
8 forms?

9 A I take that back. We did assist other
10 White House senior personnel but basically it was
11 their responsibility to fill out the disclosure
12 forms. Some of them had their own lawyers and
13 accountants, and we would assist them, but we weren't
14 possessed with the personal files of other members of
15 the White House official family.

16 Q But you had copies of personal disclosure
17 forms of other senior members of the White House;
18 correct, so you could help them?

19 A That's probably true. I don't have a
20 specific memory at this time but that's probably
21 true.

22 Q And in this instance, you didn't keep a

1 copy of the personal disclosure file of the
2 President; right?

3 A That's a public document.

4 Q Were there notes or backup documentation or
5 drafts or memos relating to how that form was
6 prepared?

7 A I don't recall whether there was such a
8 note.

9 Q Did you look to see whether there was a
10 copy of documentation that you should keep in order
11 to be able to assist the President in the future with
12 the personal disclosures?

13 A Did I do what?

14 MR. CHERTOFF: Read the question back.

15 (The reporter read the record as requested.)

16 THE WITNESS: Not at that time.

17 BY MR. CHERTOFF:

18 Q You just moved it out of the office?

19 A I moved the personal files out of the
20 office, yes.

21 Q What was the rush?

22 A There was no rush. It was a logical and

1 natural thing to do. I'd just moved the Foster files
2 out of the office. There was no rush. It was a
3 natural thing to do. Foster's personal lawyers were
4 there, I handed them the files, the law enforcement
5 people agreed. The search was over.

6 I told Neuwirth we're going to assign
7 matters to other attorneys as soon as we get back
8 because that will take some time. I gave him that
9 instruction.

10 Q You didn't tell Neuwirth to get started on
11 the 22nd, did you?

12 A Because that would take a long period -- I
13 told him on the 22nd it's something I wanted him to
14 do, and he would get started immediately after we
15 returned because that would take a while. The
16 personal files of the Clintons was -- there was a
17 limited number of files of the Clintons.

18 With the search was over, it was the most
19 natural thing in the world to say we're not going to
20 work on this stuff. The official matters are over.
21 Maggie, send them to the new lawyers. Just like I
22 did with the Foster files, I did with the Clinton

1 files.

2 Q But with the Foster files, you had
3 completed the process in the course of sitting with
4 all the agents and Mr. Spafford was right there;
5 correct?

6 A Correct.

7 Q With the Clinton personal files, you had to
8 send people out to call Maggie Williams; correct?

9 A That was -- yeah, a 30-second endeavor.

10 Q Would it surprise you to learn that there
11 were two people who called over a period of 30
12 minutes to locate her?

13 A My instructions to call her was a 30-second
14 endeavor.

15 Q You had to wait for her to come; right?

16 A Yes.

17 Q Her office was in the Old Executive Office
18 Building; correct?

19 A No.

20 Q That was her main office?

21 A No. Her main office was in the west wing,
22 right down the hall from me.

1 Q Do you know whether that day she was in the
2 Old Executive Office Building?

3 A I don't know. I don't know where she was.

4 Q You had her come in to help you start --
5 begin to start sorting through the files; right?

6 A It was an easy task.

7 Q I just want to make sure I'm correct. You
8 had her then come in so you could work with her
9 sorting through the files; right?

10 A Yes.

11 Q You then got somebody to come and take the
12 files up to the residence?

13 A Yes. She had somebody come and take the
14 files to the residence.

15 Q And this was on the late afternoon or
16 evening before you were all about to go on to Little
17 Rock the next day; correct?

18 A Correct.

19 Q At that point in time, there was still a
20 lock on Mr. Foster's door; right?

21 A So?

22 Q You could have left the office at any point

1 in time and locked it; correct?

2 A I could have.

3 Q And of course, the regular security system
4 and alarm system at the White House counsel's suite
5 was continuing to be operative on the 22nd; right?

6 A Yes.

7 Q And as far as you knew, it would be
8 operative on the 23rd and the 24th and the 25th;
9 correct?

10 A I had every reason to believe the White
11 House alarm system would be operative on Friday,
12 Saturday and Sunday. I really had confidence in the
13 alarm --

14 Q So you were not possessed of any sudden
15 concern of a lapse in security with respect to
16 Mr. Foster's office?

17 A Absolutely not. I was absolutely confident
18 of the White House security.

19 Q Did you have Ms. Gorham come in at a point
20 in time to ask her some questions concerning the
21 Clintons' personal documentation?

22 A Perhaps. I don't remember. It's

1 possible. If I saw a file which I wasn't sure was a
2 personal file or not, I might have asked her if she
3 had any knowledge with respect to the file. But the
4 answer to the specific question is I don't have any
5 recollection of that.

6 Q Did she -- did you ask her to review the
7 contents of the various file folders in the drawer
8 that contained the Clintons' personal financial
9 files?

10 A I don't recall doing that. It's possible,
11 but I don't recall.

12 Q Did you stop her in the middle of the
13 process and tell her to leave?

14 A I don't recall that at all.

15 Q Did you know whether there was an index
16 that was at the front of the drawer with the
17 documentation that listed all the contents of the
18 drawer?

19 A I have no memory of that.

20 Q You've never seen such a thing?

21 A I have no memory of seeing such a thing.

22 Q Did you keep an inventory or list of all

1 the documents you were sending over to the Clintons?

2 A No.

3 Q You recall Ms. Gorham certainly being
4 outside in the outer area of the office while you
5 were going through the documents with Ms. Williams;
6 correct?

7 A Probably.

8 Q Is there any reason you know she couldn't
9 have come in and prepared a list and a transmittal
10 document to show the Clintons what they were getting
11 and to keep a record of what was being sent up there?

12 A Could it have been done? Of course it
13 could have been done.

14 Q Did you think of doing it?

15 A No, I didn't think of doing it.

16 Q Did you make a decision not to do it?

17 A I didn't make a decision not to do it.

18 Q Did you tell Maggie Williams to get the
19 documents to Bob Barnett?

20 A No. I told Maggie Williams that the
21 documents would probably be sent to Bob Barnett, but
22 that she -- my memory is I said you better check with

1 the Clintons, with the President or with Hillary, to
2 see if Bob Barnett is the guy they want to send these
3 personal files to, but I'm virtually certain, I said,
4 that it will be Bob Barnett.

5 Q But you didn't instruct her to send it to
6 Bob Barnett; right?

7 A No, I didn't instruct her to send it to Bob
8 Barnett.

9 Q Because you didn't know if he was the
10 person to get it; right?

11 A That was my memory. I was like 99 percent
12 sure it would happen, but I have this memory that --
13 I wasn't 100 certain, so I said to her to check with
14 them.

15 Q And she didn't say no, I'm certain Barnett
16 is going to get it?

17 A She didn't say that. I don't remember her
18 saying that.

19 Q So your recollection is the way you left it
20 was that it should go up to the residence?

21 A Yes, my recollection is the documents were
22 going to the residence until she could check with the

1 Clintons and until it could be sent over to whoever
2 they selected, which was going to be Bob Barnett.

3 MR. PEDOWITZ: Which was going to be Bob
4 Barnett?

5 THE WITNESS: Which was likely to be Bob
6 Barnett.

7 BY MR. CHERTOFF:

8 Q And you didn't call the President to find
9 out what he wanted to do at that point?

10 A No.

11 Q Was there any discussion about whether
12 there were any logistical difficulties in getting the
13 documents over to Mr. Barnett, if that were to be the
14 decision?

15 A It was getting late in the afternoon, but I
16 don't remember any discussion about logistical
17 difficulties.

18 Q Was there any discussion with Carolyn Huber
19 at this point in time concerning getting the box of
20 documents into the residence?

21 A No.

22 Q Would it surprise you to learn that Carolyn

1 Huber was the person who was the custodian of the key
2 for the closet in which the box was eventually
3 placed?

4 A It would not surprise me.

5 Q Does that help you recall why, the previous
6 day, you paged Carolyn Huber?

7 A It does not.

8 Q Did you have any further discussion with
9 Maggie Williams after she left with the boxes?

10 MR. PEDOWITZ: About?

11 MR. CHERTOFF: Anything, during the rest of
12 the day.

13 THE WITNESS: I recall no further
14 discussion. I may have had further discussions.
15 Maggie's office was 15 feet from my office, and I see
16 her all the time.

17 BY MR. CHERTOFF:

18 Q In your conversation with Susan Thomases on
19 the 22nd, was there any discussion about the boxes of
20 documents going up to the residence?

21 A I don't recollect that being part of that
22 conversation. I believe not.

1 Q Was there any discussion about the boxes of
2 documents going anywhere?

3 A I don't believe we discussed boxes of
4 documents with Susan Thomases.

5 Q Did you have any conversation with anybody
6 on the 22nd in which they communicated to you that
7 the President or the First Lady had any desire with
8 respect to the disposition of their personal files in
9 the Foster office?

10 A No, I had no such conversation.

11 Q Did you have a conversation with
12 Mr. Heymann later that day?

13 A Yes.

14 Q Did you make the call or did he make the
15 call?

16 A My recollection is this -- and it's a
17 little vague -- I remember one call -- that I
18 received a call from Mr. Heymann. It was either that
19 evening or the following week after the note or the
20 handwritten note was found, so this is why I'm a
21 little vague on this. I'm fairly sure now. I've
22 been thinking about it more recently.

1 The call I remember took place probably
2 after the note was discovered because I remember
3 Mr. Heymann at that point saying to me he thought
4 under the circumstances that the office should be
5 kept intact. I remember him saying something like
6 that to me, but for a while, I thought that was
7 before the note was discovered. Now I think it was
8 after the note was discovered, but I'm still
9 unclear. It was clearly no earlier than the night of
10 July 22nd. This call probably took place the 27th or
11 the 28th of July.

12 Q Do you remember a call where Mr. Heymann
13 specifically criticized you for the way in which you
14 had handled the search on the 22nd?

15 A The answer to that is no. The answer to
16 that is what I remember is what I just said. I
17 remember this call which he said -- I think the
18 office should be kept intact, and I said the
19 office -- I don't agree with you, the office is not
20 intact. It's a working office of assigned files.
21 Other people are working on things.

22 Q Well, you're clear that the call you're

1 referring to here occurred after the search on the
2 22nd?

3 A For a while I thought it was -- after the
4 search on the 22nd? Oh, there's no question, after
5 the search on the 22nd.

6 Q So at least bearing that in mind, in that
7 period after the search on the 22nd, whether it be on
8 the 22nd or later the next week, did Mr. Heymann have
9 a call to you where he said you misused the
10 Department of Justice?

11 A No, I don't believe -- I don't remember any
12 such statement by Mr. Heymann.

13 Q Did he have a conversation with you in
14 which he asked you if you had anything to hide?

15 A I don't remember any such conversation.

16 Q Can you remember any occasion in your
17 tenure as White House counsel in which the Deputy
18 Attorney General of the United States said to you
19 that you misused the Department of Justice?

20 A No, I can't think of any set of
21 circumstances.

22 Q That would be a memorable thing, wouldn't

1 it?

2 A It would be a memorable thing.

3 Q And of course, in this period of time, this
4 was within a month or so of the travel office
5 controversy which had resulted in your having had an
6 agreement with the Attorney General concerning future
7 relations between the White House counsel and the
8 Department of Justice; correct?

9 A Yes.

10 Q So you had, even before July 20th, had your
11 attention drawn in particular to the need to maintain
12 a certain relationship with the Department of
13 Justice; right?

14 A The answer to that is yes. The answer to
15 that is yes. But there was never any belief in the
16 White House at any time that we misused the
17 Department of Justice, including with respect to --
18 I'm talking about White House counsel's office. Let
19 me limit it to that for the moment -- that we -- that
20 there was a misuse of the Department of Justice in
21 connection with the travel office matter or any other
22 matter.

1 No one in the White House counsel's office,
2 myself or Mr. Foster or anybody else, we didn't
3 believe we had misused the Department of Justice, nor
4 do I believe the Attorney General believed we misused
5 the Department of Justice in connection with the
6 travel office thing. We agreed to a procedure to be
7 followed in the future to mitigate the appearance or
8 the claims of possible misuse, but nobody thought we
9 were misusing the Department of Justice.

10 Q And having been made sensitive to the need
11 to maintain a proper appearance in the relationship
12 between the White House and the Department of
13 Justice, would you agree with me that a statement by
14 the Deputy Attorney General shortly thereafter that
15 you had misused the Department of Justice in another
16 instance would be a memorable thing?

17 A I remember no such statement, and if he
18 made such a statement, I would have vehemently
19 disagreed with him, but I don't remember it because
20 we didn't misuse the Department of Justice.

21 Q Did you see the scraps of paper in the
22 briefcase in Mr. Foster's office after the law

1 enforcement people left on the 22nd of July?

2 A No.

3 MR. PEDOWITZ: Mike, you're talking
4 about -- the question had a certain ambiguity in
5 terms of time frame. You're talking about on the
6 22nd?

7 MR. CHERTOFF: On that day.

8 THE WITNESS: No. I assumed you meant
9 that. The answer is no.

10 BY MR. CHERTOFF:

11 Q On the 22nd of July, after the law
12 enforcement people left, are you aware of anybody who
13 looked at those scraps of paper?

14 A No, I'm not aware of anybody looking at
15 those scraps of paper.

16 Q Do you know whether Ms. Gorham saw what
17 looked like scraps of paper there?

18 A I don't know if she saw them.

19 Q Did anybody in the staff mention to you
20 there were scraps of paper there?

21 A No.

22 Q Do you know of anyone who assembled the

1 scraps of paper that were in the -- any scraps of
2 paper from the briefcase at any time before the
3 middle of the day on the 26th of July, 1993?

4 A No.

5 Q You went to Little Rock on Air Force 1 with
6 the President on the next Friday; correct?

7 A Right.

8 Q Did you tell the President the documents
9 had been moved into the residence?

10 A No.

11 Q Did you speak to the President about the
12 review of Mr. Foster's office?

13 A No. We were focusing on other things that
14 day, such as the funeral of Vince Foster.

15 Q When you came back from the funeral, you
16 came back with the President and the First Lady?

17 A Right. I spoke to Bob Barnett on Air Force
18 1.

19 Q We'll come to that in a second. You came
20 back with the President and First Lady; correct?

21 A That's correct.

22 Q At any time on the 23rd, did you speak to

270

1 the First Lady about anything to do with the
2 documents in Vincent Foster's office?

3 A No.

4 Q Was Susan Thomases at the funeral?

5 A I don't remember.

6 Q At any time on the 22nd, did you speak to
7 the President about any documents that had been in
8 Vincent Foster's office?

9 A No.

10 Q You didn't tell the President or the First
11 Lady about any controversy with the Department of
12 Justice?

13 A No.

14 Q When you saw Mr. Barnett, did you have a
15 conversation with him about the documents?

16 A Yes.

17 Q What was the conversation?

18 A I said to Bob on Air Force 1 that we're
19 transferring the Clinton personal files out of
20 Foster's office in view of Foster's death, that I
21 believed the personal files should go to the Clintons
22 and their personal lawyers. I assumed that the

1 Clintons would probably be sending it to him, and I
2 wanted him to be aware of that fact.

3 I didn't know for sure, but I was like 99
4 percent sure, and also, what did he think of the idea
5 of him getting the files, and he said he thought it
6 was a good idea for him to get the personal files,
7 and that's what the Clintons decided.

8 Q So he indicated to you he didn't know what
9 the Clintons' decision would be?

10 A That's my memory. My memory is that there
11 was no decision at that point that they would go to
12 him, although we were all acting on the assumption
13 that they would go to him, and they did go to him.

14 Q He didn't tell you on this flight on the
15 23rd that he had any conversations with anybody about
16 anybody taking possession of the files?

17 A That's correct. I don't remember him
18 telling me about any such conversations.

19 (Pause.)

20 BY MR. CHERTOFF:

21 Q Was Mr. McLarty on the flight out to Little
22 Rock?

1 A Yes. I'm virtually certain. I don't have
2 a specific memory in my mind at this time, but he
3 was.

4 Q Was Mr. Burton on the flight out?

5 A Yes.

6 Q Was Mr. Quinn on the flight out?

7 A I think so.

8 Q Now, you've previously testified -- and I'm
9 just characterizing it generally -- that you had
10 conversations on the 22nd with people in the White
11 House who expressed certain views concerning how the
12 document search in the Foster office ought to occur.

13 Did any of these people ask you, after that
14 search was over on the 22nd up through the 23rd, how
15 it went?

16 A Burton was there, and I assumed he talked
17 to McLarty. I'm virtually positive he did. And I
18 think we all believed it went fine, it went well, it
19 served its purpose. We looked for a note. We didn't
20 waive privilege or anything. Certain requests were
21 made for additional documents, and we'll get to
22 those, and we'll comply. There was no discussion

1 about any controversy with the Department of Justice
2 because there was no controversy with the Department
3 of Justice.

4 Q So there was no discussion you had with
5 anybody in the White House on the 23rd concerning the
6 way in which that search had been conducted?

7 A It's possible there was a discussion, but
8 just that things went well. I don't remember any
9 such discussion, but I don't exclude the possibility
10 that such a discussion took place. Nothing sticks in
11 my mind.

12 Q And you didn't warn anybody or say anything
13 to anybody about the possibility that there might be
14 some complaints from the Department of Justice about
15 the way in which the procedure was handled?

16 A No.

17 Q You didn't discuss any of your
18 conversations with Phil Heymann with anyone on the
19 23rd?

20 A No.

21 Q Now, when did you get back on the 23rd?

22 A Very late in the evening, I believe.

1 Q And both the President and the First Lady
2 came back on Air Force 1; correct?

3 A Correct.

4 Q To your knowledge, they stayed in the White
5 House over the weekend?

6 A I believe that, yes.

7 Q Did you learn on Monday the President went
8 out to Chicago with Mr. McLarty?

9 A Yes, I knew that.

10 Q But you also knew that on Monday, the First
11 Lady was still at the White House; right?

12 A That's right.

13 Q You yourself went away over the weekend?

14 A Yes.

15 Q When did you leave?

16 A Probably early Saturday morning, I think.

17 Q And where did you go?

18 A Maine.

19 Q When did you get back?

20 A Late Sunday night.

21 Q During the period of time you were away,
22 did you have any conversations with anyone affiliated

1 with the White House?

2 A I don't recall any conversations. It's
3 possible I had, but I don't recall. I don't think
4 so. I don't think so, but that's the best I can say.

5 Q On Monday, you had Mr. Neuwirth go and
6 start the process of inventorying the work files;
7 correct?

8 A Yes.

9 Q And you actually directed him to prepare an
10 inventory?

11 A Of the list of files, not every document in
12 the office. What files -- the working files that
13 were in Vince's office. This is not an inventory of
14 each specific document in the office. It's an
15 inventory of files in the office so we can decide who
16 gets file A, who gets file B. I directed him to do
17 that.

18 Q And how long did it take him to do that?

19 A I don't know. A couple of hours, maybe
20 more. I don't know.

21 Q By that point, when you came in on Monday
22 morning, the 26th, was the office -- Vincent Foster's

1 office door opened?

2 A No, it was locked. My recollection is that
3 when we left, the office door was locked. I had the
4 key. I locked the office, and we went off to
5 Arkansas, and for three days I don't believe anybody
6 went into the office. I had the key. Secret Service
7 had the key. I'm not sure whether Deborah Gorham had
8 a key or not. She may have had a key, but I don't
9 know of anybody going in the office during that three
10 days.

11 Q But Mr. Foster's office was opened on the
12 26th?

13 A Yes, it was opened on the 26th.

14 Q And once the business hours --

15 MR. PEDOWITZ: Did you say open or opened
16 on the 26th?

17 MR. CHERTOFF: Opened, -e-d.

18 BY MR. CHERTOFF:

19 Q Once business hours were in effect, did the
20 door remain locked except for specific times or did
21 it remain open generally as Mr. Neuwirth went in and
22 out?

1 A I think it remained, from that time on, it
2 remained opened.

3 Q And there was no Secret Service person
4 posted?

5 A No Secret Service person posted.

6 Q No entry log?

7 A No.

8 Q No restriction on access?

9 A No.

10 Q Do you know whether Ms. Gorham went in from
11 time to time?

12 A Probably. Now we're going to move files to
13 other people.

14 Q And this is in the period of time after the
15 Clinton personal files had been removed?

16 A They would have been removed, yes.

17 Q Was it important to you to have the Clinton
18 personal files removed before the general process of
19 inventorying the documents occurred?

20 A It wasn't important. It seemed natural to
21 remove them at that point in time because I had just
22 removed -- what made it seem natural is that I just,

1 I was sort of focusing on removing personal files.
2 I'd just removed the Foster personal files in the
3 presence of law enforcement. I saw the Clinton
4 personal files. It was natural to move them. Was it
5 important? It wasn't important.

6 Q Now, there came a point in time when you
7 heard something about pieces of paper found in the
8 briefcase?

9 A Yes.

10 Q And how did you first hear about that?

11 A I walked into my office, my office.

12 Q About when was this?

13 A I have a recollection it was in the
14 afternoon, 3:00, something like that, and I saw Steve
15 Neuwirth in my office sitting at a conference table
16 that I had in my office, putting pieces of, scraps of
17 paper together, and I said what are you doing? You
18 know, he had free run of my office. It wasn't
19 unusual that my staff would come into my office even
20 if I wasn't there. It was very -- I had a good
21 working relationship with my staff members and they
22 can show up and walk in my office and wait for me if

1 they wish to.

2 But he was sitting there sort of putting
3 scraps of, pieces of paper together. I said what are
4 you doing? He says I just found these. I was
5 packing Vince's briefcase to send back along with his
6 other personal effects and I turn over the briefcase
7 and these things floated out. And I looked down and
8 saw handwriting on them so I picked them up to see if
9 I could put them together, and I'm putting them
10 together. He was 7/8 of the way through putting them
11 together. He was sort of reading and he said look at
12 this.

13 Q Did you read it?

14 A I looked down and started reading it, and
15 we saw that it was in Vince's handwriting, and it was
16 a list of things, reflecting things that were
17 troubling Vince.

18 Q Now, at that point, Mr. Neuwirth had told
19 you that it was found in the briefcase, which you had
20 previously looked at on the 22nd of July?

21 A It was found in the briefcase from which I
22 removed files and glanced down to see that I removed

280

1 all the files.

2 Q Do you actually remember, back on the 22nd
3 when you glanced down at the briefcase, that you
4 opened the briefcase visibly to those present in
5 order to indicate that you were looking in it, that
6 it was empty?

7 A No, I don't remember doing that.

8 Q Your recollection is you didn't do that?

9 A My recollection is I don't remember doing
10 that. I don't remember doing it. I just don't
11 remember that.

12 Q You remember glancing at it?

13 A I remember glancing down at it, you know, I
14 remember sort of talking while I was doing it, sort
15 of describing something, I'm going to reach into
16 Vince's briefcase and I'm pulling out these files.
17 And I glance down and these are the files in the
18 briefcase and putting them down. That's all I
19 remember.

20 Q You don't remember opening it up and
21 looking for a note?

22 A I don't remember picking it up and opening

1 it up.

2 Q Or even leaning over and opening it?

3 A I don't remember doing that.

4 Q When Mr. Neuwirth indicated to you that he
5 had found these scraps of paper which had been
6 assembled into this page, were you -- how did you
7 feel about the fact that you had been, on the
8 previous Thursday, conducting a search for a note in
9 that very briefcase?

10 A I don't know -- it's hard to answer that
11 question. I don't know -- I was concentrating on
12 what I was reading.

13 Q So you didn't think about whether you had
14 made a mistake or there might be some problem about
15 the previous Thursday's search, given the fact that
16 you had missed this writing?

17 A Not at that moment, although shortly
18 thereafter I had such thoughts.

19 Q Did the individual pieces of torn up paper
20 make up a single page or more than one page?

21 A They made up a single page.

22 Q Were there any extra pieces of scrap paper?

1 A I don't think so.

2 Q Were there any missing pieces of scrap
3 paper?

4 A At some point I realized there was one
5 missing piece of scrap paper, but I don't know when I
6 realized it. The writing was clear. I mean, there
7 was nothing missing in the middle of the writing.
8 You can read the whole writing, and I didn't look to
9 see if there was anything missing in any other part
10 of the sheet after we pieced it together.

11 Q After you read it, what did you do?

12 A I'm a little vague, but I went -- I think I
13 went down to Burton. I went down to the chief of
14 staff's office. I was first going to tell the chief
15 of staff but on the way down it hit me that the chief
16 of staff wasn't there. He was in Chicago with the
17 President. I mean, I didn't think of it until I
18 started walking down.

19 So I saw Burton, who was a logical person
20 to talk to in any event because he was the one who
21 had been dealing with me, and I said look, Steve
22 Neuwirth found something, and you should see it and

1 let's go up and see it. And we walked up, and he
2 went over to read it.

3 Q Now, when he came in, did you shut the
4 door?

5 A I may have, yes.

6 Q Did you tell him, as he walked in or on the
7 way up, what had been found?

8 A I don't remember when I told him. I may
9 have just said come here, here's something you should
10 see, here's something you should look at.

11 Q Once he got into the room, by then had you
12 informed him that something had been found in the
13 briefcase?

14 A I don't remember when I informed him of
15 that. Obviously, I informed him sometime during that
16 period.

17 Q He walked over?

18 A He walked over to the table.

19 Q He read the note?

20 A He read the note.

21 Q Did he identify it also as Vincent Foster's
22 handwriting?

1 A I don't know whether he did or didn't.

2 There was no question in my mind that it was.

3 Q Did he touch the note?

4 A I don't know if he did.

5 Q At some point did you touch the note?

6 A Yes, I touched the note. I was piecing it
7 together, Neuwirth was piecing it together, but I was
8 sort of helping him and I touched the note
9 subsequently, later. As you know, my fingerprints
10 and palm prints are all over the note.

11 Q You've been told subsequently that you have
12 a palm print that was matched with a latent palm
13 print on a latent piece of paper?

14 A Yes, I was handling the note. I took
15 possession of the note.

16 Q Mr. Burton read the note in your presence?

17 A Yes.

18 Q What discussion did you have?

19 A The next thing I remember is getting up and
20 walking over to the First Lady's office.

21 Q Now, before you did that, did you have any
22 discussion amongst yourselves as to what to do with

1 this?

2 A I don't think so. I don't think we did. I
3 wanted to inform certain people what Neuwirth had
4 found.

5 Q So you went over to the First Lady's
6 office?

7 A Yes, and I walked into her office.

8 Q And she was in the office?

9 A She was in the office.

10 Q This is around 5:00 in the evening?

11 A I don't remember. If you asked me could it
12 have been 3:00, my best guess is it would have been
13 3:00, but it could have been 5:00.

14 Q Did you shut the door?

15 MR. PEDOWITZ: Which door?

16 MR. CHERTOFF: To the First Lady's office.

17 THE WITNESS: I don't recall whether we
18 shut the door.

19 BY MR. CHERTOFF:

20 Q What did you tell her?

21 A I told her that I wanted to accompany her
22 to my office which was very close to her office. I

1 found something that I thought she should see.

2 Q Did you say found it in connection with
3 what?

4 A All I remember -- we found something that
5 Vince wrote. I don't know the words that I used. I
6 found something that I think you should take a look
7 at.

8 Q Did you tell her in this conversation that
9 it was something Vince wrote?

10 A I may have. I may not have. I don't
11 remember.

12 Q Did she ask you what it was?

13 A I don't remember.

14 Q Did you tell her what it was?

15 A I don't remember. I remember I said --
16 what I remember is what I've told you. I asked her
17 to come with me. I wanted to show her something in
18 my office.

19 Q Did she get up immediately to go?

20 A Yes, she did.

21 Q Did anyone else come with you?

22 A No.

1 Q You walked into your office?
2 A Correct.
3 Q Mr. Burton was there?
4 A Mr. Burton was there and Mr. Neuwirth was
5 there.
6 Q Did you shut the door?
7 A Did I shut the door? I don't remember
8 whether I shut the door or not.
9 Q What did you say?
10 A I probably shut the door.
11 Q What did you say?
12 A I said here, take a look at this. I want
13 you to read this.
14 Q Did she walk over and read it?
15 This is Mr. Johnson who works with me.
16 Did she walk over and read it?
17 A She walked over and glanced -- looked at
18 it. I may have told her -- this is the thing. I may
19 have told her look, we found something Vince wrote.
20 I'm not positive of it. I don't have a specific
21 memory of it, but it's something Vince wrote. It's
22 something you should read. So my best memory is she

1 sort of knew what she was going to look at, and she
2 just -- she looked at it, and all of a sudden she had
3 some sort of an emotional -- she began to read it but
4 she didn't read it. She didn't appear to read it.
5 When she sat down and looked at it, she
6 just said -- she had an emotional reaction and she
7 said I just can't deal with this. This is like -- I
8 just can't deal with this. Bernie, you deal with
9 this. And she walked out of my office.
10 Q Did you have any discussion with her during
11 this entire period about what should happen with this
12 writing in terms of whether it should be turned over
13 to anybody?
14 A No.
15 Q It wasn't discussed?
16 A No.
17 Q She did not read the note?
18 A I don't believe she read the note. What I
19 remember is -- because it happened so fast. She --
20 it sort of shocked -- it surprised me at least, I
21 think the rest of us, she looked at it. I thought
22 she would sit and read it and we would talk, but that

1 was not what happened. What happened was she
2 looked -- she just looked down and she said -- she
3 maybe read a word or she saw his writing. Maybe she
4 didn't even read a word and said I cannot deal with
5 this, I cannot deal with this and she said you deal
6 with it, and she stepped out.

7 Q Your understanding was, as of this point in
8 time, the question whether Mr. Foster had written any
9 kind of a note or writing indicative of his state of
10 mind that might have caused him to commit suicide was
11 a very burning issue in the White House; right?

12 A No, we all assumed that he left no note.
13 At this moment in time? No, it was not a burning
14 issue in the White House.

15 Q Earlier it had been a burning issue?

16 A Yeah, earlier we wanted to know if he left
17 a suicide note or an extortion note or some similar
18 such document and now we found a similar such
19 document.

20 Q You knew Ms. Thomases had been looking for
21 it?

22 A Yes.

1 Q You had been looking for it?

2 A Yes.

3 Q The FBI had been looking for it?

4 A The law enforcement people wanted us to
5 look into his office to see if there was such a
6 document there, yes.

7 Q The Park Police were also looking for it?

8 A Yes.

9 Q And on the 26th, you found the first
10 writing that, to your mind, was what you would call
11 something like a suicide note?

12 A That's correct, and that was sort of an
13 initial conundrum, at least for certain people,
14 although it really wasn't a conundrum with me. I'm
15 talking about the conversations with Burton and
16 Neuwirth in the office after she left. It wasn't
17 clearly a suicide note.

18 Q But it was in the ballpark of a suicide
19 note?

20 A That's right. It was in the ballpark of a
21 suicide note. At least I thought it was in the
22 ballpark of a suicide note.

1 Q And you obviously were very interested to
2 read it; right?

3 A Was I very interested to read it? Yes, I
4 was interested to read it.

5 Q Mr. Burton was interested in reading it?

6 A Yes.

7 Q And you called Mr. McLarty in Chicago?

8 A Right.

9 Q And you read it to him?

10 A Yes.

11 Q And he was so interested, he said I want to
12 come back and look at it myself as soon as possible;
13 right?

14 A Right.

15 Q And you went over to Mrs. Clinton in that
16 same period of time, into her office; right?

17 A Right.

18 Q To tell her you found something?

19 A Right.

20 Q Now, you understood it was a sensitive
21 issue; right?

22 MR. PEDOWITZ: What was sensitive?

1 MR. CHERTOFF: This whole issue of the note
2 and Mr. Foster's death.

3 THE WITNESS: I don't know what that
4 means. Mr. Foster's death was beyond being a
5 sensitive issue.

6 BY MR. CHERTOFF:

7 Q It was an emotional issue?

8 A It was an emotional issue and it was a
9 great tragedy.

10 Q You weren't looking to play games with
11 Mrs. Clinton?

12 A No, I wasn't.

13 Q You weren't looking for something to try to
14 surprise her, were you?

15 A No, I wasn't.

16 Q Is it your best reaction you told her or
17 didn't tell her that a writing of Vincent Foster had
18 been found?

19 MR. PEDOWITZ: When?

20 BY MR. CHERTOFF:

21 Q When you walked into her office.

22 A I already testified to this. I don't have

1 any specific memory of telling her or -- I think I
2 told her a writing was found.

3 Q Because there would be no point in bringing
4 her in there without giving her a warning; right?

5 A That's why I think I told her a writing was
6 found. It's possible I said look, come into my
7 office, I just want to show you something. She would
8 listen to me and she would come in and see it. But I
9 think I probably said we found a writing by Vince
10 which you should see.

11 Q Because you'd want to prepare her --

12 A That's right. I think it's more likely
13 that happened than not telling her that I found a
14 writing, but I'm not positive. That's the thing. I
15 just don't have a precise recollection of the
16 conversation.

17 Q And you certainly weren't looking to shock
18 her or surprise her?

19 A No, I wasn't looking to shock her or
20 surprise her, but I knew the finding of this thing --
21 we were all emotional -- it would have an impact on
22 us.

1 Q And at the same time, it's not your
2 recollection -- you hadn't copied down the content of
3 the note at that point, had you?

4 A No, but I read it, and it was very
5 poignant.

6 Q But you hadn't memorized it?

7 A Not word for word.

8 Q You certainly weren't in a position to tell
9 Mrs. Clinton when you walked into her office that
10 afternoon or early evening what the content of the
11 note was?

12 A I didn't attempt to tell her what the
13 content of the note was.

14 Q You brought her in; right?

15 A Correct.

16 Q You brought her into a place where there
17 were two other people; right?

18 A Correct.

19 Q Mr. Burton and Mr. Neuwirth?

20 A Right.

21 Q Those were not people in your mind who were
22 particularly close friends of the First Lady?

1 A That's not so.

2 Q They were close friends?

3 A Not close friends but people she knew very
4 well in the White House. She knew -- Steve Neuwirth
5 had been working with Vince Foster on a lot of stuff
6 for the First Lady, not personal stuff, but other
7 kinds of things, and he was the member of my staff
8 who knew the First Lady best, other than Vince
9 Foster. And Bill Burton is somebody she knows very
10 well, for a long time. I wasn't walking into an
11 office with two people that she didn't know.

12 Q You didn't have a privacy concern?

13 A I didn't have a privacy concern. With
14 Burton and Neuwirth, I had no concern.

15 Q And your testimony is that, to the best of
16 your recollection, although she may have glanced at
17 the note, she did not read it?

18 A I don't think she read it. Because this
19 outburst that I cannot deal with this came so fast, I
20 don't think she had time to read it.

21 Q She said I don't want to deal with this and
22 she walked out?

1 A That's correct.

2 Q At any later point in the day, did she ask
3 you to see the note?

4 A I don't recall her asking me to see the
5 note at any time later in the day. I don't think
6 so. I would have remembered that.

7 Q Did it surprise you that she didn't want to
8 read the note?

9 A Only for an instant, but because -- then I
10 totally understood. I realized -- it surprised me,
11 but I understood immediately she just had this
12 emotional reaction that overcame her. It brought
13 back Vince's death and the whole circumstance, so in
14 the final analysis, I wasn't surprised.

15 Q Did she go back to her office?

16 A I believe she went back to her office.

17 Q At any point later, did she call you or ask
18 you at any point later that day, did she call you or
19 ask you to tell her about the content of the note?

20 A I don't recall any such conversation.

21 Q And you had no discussion with her about
22 what the note might say concerning why he took his

1 life?

2 A I didn't convey it to her. And she may
3 have seen some of it. I don't know. I don't know.
4 Only she can answer what she saw and didn't see. I
5 never really discussed that with her. But it's my
6 understanding that she was aware -- that she became
7 aware of the contents of the note. I didn't make --
8 maybe Burton discussed it with her later.

9 Q Where did you get that idea?

10 A I don't have that idea. I said maybe. My
11 impression is that she learned the contents of the
12 note.

13 Q When?

14 A I don't know when.

15 Q That day?

16 A I don't know if it was that day or not.

17 Q The next day?

18 A I don't know. I don't know. I don't
19 know. But soon.

20 Q By the way, there were writings in Vincent
21 Foster's handwriting that were in the box of
22 documents that were sent up from Vincent Foster's

1 office to the residence on the 22nd; right?

2 MR. PEDOWITZ: Could we have that question
3 read back, please.

4 (The reporter read the record as requested.)

5 THE WITNESS: I don't recall. I don't
6 remember right now.

7 BY MR. CHERTOFF:

8 Q You don't remember, from your review on the
9 22nd, that there were things in Vincent Foster's own
10 handwriting included in the Clinton personal
11 documents?

12 A I would imagine there probably were. I
13 just don't have any memory of it today.

14 Q How many times did you call Mr. McLarty on
15 the 26th?

16 A I only remember calling him once.

17 Q And did you ask him to tell the President
18 the note had been found?

19 A I think I did that, yes. My best memory is
20 I called McLarty to tell him what I found, to read it
21 to him, but I assumed he would tell the President so
22 I don't think I said tell the President. I mean,

1 that's not the relationship I have with the chief of
2 staff. I found this, tell the President. I just
3 assumed he would tell the President.

4 Q Did he indicate to you he was going to copy
5 down the content of the note?

6 A I don't remember him indicating that.

7 Q The President and Mr. McLarty were due back
8 that day; right?

9 A They were due back very late that day, yes,
10 very late.

11 Q Did you wait around to see the President?

12 A No, I didn't wait around to see the
13 President.

14 Q Did you see the President that day?

15 A I didn't see the President that day.

16 Q Did you speak to him that day?

17 A I didn't speak to him that day.

18 Q At any point during that day, after the
19 note -- after Mr. Neuwirth -- withdrawn.

20 At any point on the 26th after you walked
21 in and saw Mr. Neuwirth putting together the scraps
22 of paper that became this writing, did you start to

1 consider whether there was a potential problem in the
2 fact that on the 22nd you had had custody of the
3 briefcase and had been supposedly doing a search of
4 the briefcase?

5 A No, I didn't consider it a potential
6 problem. I considered that when the note was -- or
7 the handwritten list -- I'm using the word "note,"
8 really it's a handwritten list which wasn't clearly a
9 suicide note. I said earlier was in the ballpark of
10 a suicide note. I believe it's in the ballpark, but
11 it may also be outside the ballpark in some people's
12 view. Lisa Foster, for example, doesn't believe it's
13 a suicide note. And if you asked me today, I would
14 say I don't believe it was a suicide note.

15 But it's clear to me from the beginning of
16 finding it, this is the kind of thing if I had found
17 it on the 22nd, I would have turned it over to law
18 enforcement. And it's clear to me that this should
19 be turned over to law enforcement, and that was my
20 position from the moment I realized what we had
21 found.

22 Q Were you concerned on the 26th about the

1 fact that it was found in a briefcase that you had
2 had custody and control over on the 22nd?

3 A No, I wasn't concerned. I don't know what
4 you mean, was I concerned. Was I concerned that I
5 would be criticized in some fashion?

6 Q Were you concerned you'd be criticized?

7 A The answer is no. I recognized that I
8 might be criticized. Did I recognize I might be
9 criticized, yes, I recognized I might be criticized,
10 but I recognize that every day in the White House and
11 everything I did in the White House was the subject
12 of potential criticism. Was I concerned, was I
13 distraught, the answer is no.

14 Q Now, you had conversations with Mr. Burton
15 and Mr. Neuwirth concerning what should happen with
16 this writing?

17 A Yes.

18 Q Did you also talk about it with
19 Mr. McLarty?

20 A Probably, but I can't recall.

21 Q And tell me what the tenor of the
22 discussions was on the 26th with Mr. Neuwirth and

1 Mr. Burton?

2 A I remember discussions with them. They're
3 both lawyers. They're both able people. Burton was
4 the one who made -- he says we read it and after the
5 emotional state wore off a little bit, after we read
6 it and digested it, because it was a poignant
7 document, especially the last line about how ruining
8 people in Washington is considered sport, we all
9 said -- Burton made the point and we all recognized
10 this is clearly not a suicide note.

11 It was not to my wife or to whom it may
12 concern, I cannot deal with all these matters,
13 therefore I have to take my own life. It's not
14 that. It's a list of things and sentiments of what
15 was disturbing him in that period of time, some of
16 which I knew about or most of which I knew about from
17 my conversations with him. So it was not clearly a
18 suicide note and therefore, the issue was raised, is
19 this the kind of thing that we were searching for
20 that day. That was -- to me it was clear it was the
21 kind of thing.

22 I didn't have a problem with that issue but

1 then Burton said, on the other hand, since it's
2 clearly not a suicide note, you may think it's the
3 kind of thing we're searching for on that day. Are
4 there attorney-client privileges? Are there privacy
5 issues? If we don't turn it over, is there an
6 obstruction of justice issue with respect -- because
7 obviously the law enforcement was searching for a
8 suicide note or an extortion note or some similar
9 document, as I said, and he said I think we should
10 research these issues.

11 Q This is what Mr. Burton said?

12 A That's what I remember. I think before we
13 do anything precipitous, we should research these
14 issues.

15 Q What was your view?

16 A My view -- my view was, as I was thinking
17 about it, we're going to turn this over to law
18 enforcement, and we're going to turn it over
19 promptly. But I decided somewhere in the course of
20 the hour or two or three after the finding of this
21 thing, that I'm the White House counsel, the
22 President's counsel. Once I turn this over -- and

1 I'm going to turn it over -- I'll do the research,
2 but I'm going to turn it over unless something comes
3 up that I -- I didn't think anything would come up in
4 the research -- the minute I turn it over, I have to
5 assume it would become public immediately. I don't
6 want Lisa Foster to hear about this on the radio or
7 on TV.

8 Now, I know I can call her up and read it
9 to her on the phone, but I wanted her to see this
10 thing. I wanted her to be able to digest it. And
11 she's in Arkansas. I called Jim Hamilton. I had a
12 concern about Lisa Foster. That was really my
13 primary concern. I had a concern about Lisa Foster,
14 so I called Hamilton, and I discovered -- I believe I
15 called Hamilton. I discovered shortly thereafter
16 that Lisa was going to be in the next day. She was
17 coming in to Washington the next day in connection
18 with -- she's returning to Washington after the
19 funeral. She's going to be in the next day on the
20 22nd. The President was out of town. He was to come
21 in late that night. He would be available the next
22 day.

1 I thought it was common decency, before I
2 turn this over to law enforcement, to let Lisa see it
3 and digest it and let the President see it and digest
4 it, and I didn't see any harm in letting them have
5 that. In the meantime, we could do the research that
6 Burton was talking about, although I didn't expect
7 that research was going to produce anything that
8 would change my decision. So I made the decision to
9 show the note the next day to Lisa and to show it to
10 the President if he wanted to see it when he came in
11 the next day.

12 Q Did you have a serious question about
13 whether this note was an attorney-client privileged
14 document?

15 A Did I have a serious question?

16 Q Yes.

17 A I had no serious question.

18 Q And you certainly didn't think it was
19 executive privilege, did you?

20 A No, I didn't think there was any
21 privilege. This is the kind of thing they were
22 looking for. This is the kind of thing I was looking

1 for. I thought this was the kind of thing we're
2 going to turn over.

3 Q But your conclusion was, before you turned
4 it over, you wanted to show it to Lisa Foster?

5 A I wanted to show it to Lisa. I wanted her
6 to see it. And I wanted the President to see it if
7 he wished to see it.

8 Q Now, did you call the Attorney General and
9 say to her we found a writing by Vincent Foster, but
10 we'd like to show it to Mrs. Foster and the President
11 first?

12 A No.

13 Q Why not?

14 A No reason.

15 Q Did you want to keep your options open in
16 case someone made a decision not to turn it over?

17 A I was going to make the decision, and I was
18 making the decision to turn it over. I didn't want
19 to keep my options open, no.

20 Q What if the President or First Lady decided
21 they wanted to overrule you, they'd be able to do
22 that; right?

1 A It was inconceivable that they would. If I
2 determined to turn it over, it was inconceivable they
3 would seek to overrule me because all they wanted to
4 do was the right thing, and if I said this was the
5 right thing, it's inconceivable in terms of my
6 relationship with both of them that they would
7 overrule it. Therefore, it was not a conceivable
8 option that they would overrule me.

9 Q You can't think of a reason why you didn't
10 simply at least give notice to the law enforcement
11 authorities that something had been found?

12 A There was no -- I can't think of a reason
13 why I didn't give notice. There was no reason to
14 give notice. There was nothing -- there was no
15 reason to give notice.

16 Q That was your decision?

17 A That was my decision.

18 Q So in terms of whether there was an
19 investigative significance about the timing of it,
20 you didn't consult with the Department of Justice,
21 you made your own decision?

22 A I made a decision that a one-day delay, in

1 order to give Lisa Foster or the President an
2 opportunity to see it and digest it, would not have
3 any investigative significance.

4 Q And at any point afterwards, did you
5 discuss that decision on the delay with the First
6 Lady?

7 A No, I never discussed the decision with the
8 First Lady. At least I don't remember discussing the
9 decision with the First Lady. I don't think I did.

10 Q You didn't leave a copy of the note or
11 handwritten transcription of the note for the
12 President overnight; right?

13 A I did not. I read it to McLarty and I was
14 certain that McLarty would describe it to the
15 President in whatever fashion he thought appropriate.

16 Q The next morning you had a meeting about
17 the note?

18 A I don't remember. We had discussions about
19 the note the next morning. We had discussions about
20 the handwritten list. I'll call it a note, but I
21 really think it's a handwritten list.

22 Q And did you have a meeting between 10:00

1 and 11:00 in the morning with Mr. Neuwirth,
2 Mr. Burton, Mr. McLarty and Mr. Gergen?

3 A I think so, yes.

4 Q Was there a discussion at that point about
5 whether to turn the document over to law enforcement
6 authorities?

7 A I believe so, yes, but I was taking --
8 we're going to turn it over.

9 Q Why did you need to discuss it?

10 A Because Burton was raising issues about is
11 this a proper -- he wasn't opposing -- he was acting
12 like a devil's advocate.

13 Q How old is Burton?

14 A I don't know.

15 Q What was Burton's prior experience as a
16 lawyer?

17 A Burton has experience as a lawyer.

18 Q Burton was an associate at a law firm;
19 right?

20 A But some people are very able associates at
21 law firms and some partners are not so able.

22 Q That's true.

1 A But he was -- he was an honest graduate of
2 a Texas law school, I believe. I do know he was
3 first in the bar exam actually, I once heard, in
4 either Texas or Arkansas. He was a bright guy and he
5 had good judgment. Whether he was an associate in a
6 law firm or not, he was an able guy and he was sort
7 of -- you know, he was playing an interesting role.
8 He was like a devil's advocate; like he was sort of a
9 devil's advocate on the procedure for the search, he
10 was a devil's advocate here. I happen to like
11 devil's advocates.

12 Q You didn't invite anyone from the
13 Department of Justice to come over and play devil's
14 advocate --

15 A No, because I knew that we were going to
16 turn this over.

17 Q You spent an hour discussing this as an
18 academic exercise?

19 A I don't believe we spent an hour discussing
20 it. It may have been an hour. It made no
21 difference. I knew it was going to be turned over.
22 Research was being done. I sent Neuwirth out to

1 research things. I knew it was going to be turned
2 over. Lisa was coming in that afternoon at 2:00 or
3 3:00. I was going to show it to Lisa. I've got to
4 prepare myself for that because that could be very
5 emotional. I was going to get ahold of the President
6 sometime that day. He was very busy that day. It's
7 not that he didn't know about the note. He was very
8 busy that day other than to sit with me and discuss
9 the note, but I knew I was going to get to see him
10 later in the day one way or another. And when those
11 things were done, I was going to turn it over to law
12 enforcement.

13 Q And then Mr. Hamilton came; right?

14 A Yeah. I think so. I don't remember that.
15 I remember Lisa coming, but I don't think she came
16 with Hamilton.

17 Q Did Mr. Hamilton come in the morning around
18 11:00?

19 A That could be.

20 Q And Ms. Foster came later?

21 A Yes.

22 Q And that was around 5:00; right?

1 A Again, I would say 3:00, but I'm almost
2 fixated on 3. You're fixated on 5:00.

3 Q At around 6:00, the President was finally
4 informed about the note?

5 A The President had been informed -- 6:00 is
6 when I discussed the note with the President.

7 Q Tell us about that. How did you finally
8 get in to see the President about the note?

9 A The President had a series of meetings that
10 day, I think on foreign policy I have this vague
11 recollection. So it was hard to get to see him. I
12 just walked into his office.

13 Q In the Oval Office?

14 A In the Oval Office.

15 Q Were you by yourself?

16 A Yes, I was by myself.

17 Q McLarty wasn't with you?

18 A McLarty may have walked in. McLarty may
19 have been there for part of the time. I wasn't --
20 this turned out not to be a very long -- I had the
21 note with me -- I think I had the note with me.

22 Q You had the scraps with you?

- 1 A I don't think I had the scraps with me. I
2 had a -- I don't think I had the scraps with me. I
3 had a transcription -- I had written out myself a
4 transcription of the handwritten list.
5 Q When did you do that?
6 A I think I did it on the -- when we
7 discovered it. It was a way of having a physical
8 copy of the note without always putting together the
9 scrapsful. I just wrote out what it looked like.
10 Q You did it on the 26th?
11 A I think I did it on the 26th.
12 Q That's the Monday?
13 A That's the Monday.
14 Q By the way, where did you keep the actual
15 torn-up note Monday night?
16 A In my desk.
17 Q In your desk?
18 A Yes.
19 Q Locked?
20 A It was in an envelope in my desk.
21 Q Locked?
22 A What, the desk?
-

- 1 Q Yes.
2 A No, the desk was not locked.
3 Q Did you have a safe?
4 A I had a safe -- actually, I had it in the
5 safe for a while -- I probably had it in the safe on
6 Monday night.
7 Q How did it get into the safe?
8 A I put -- I shouldn't be so sure. I'm not
9 sure if it was in the safe or the desk. I have no --
10 actually, my best memory it was in the safe but I'm
11 not positive because I know, at some point I remember
12 it being in my desk drawer so I probably I took it
13 out of the safe on Tuesday, kept it in my desk drawer
14 and eventually turned it over.
15 Q You have two safes in your office?
16 A Yes.
17 Q You have the combination to both of them?
18 A Yes.
19 Q Do you know how to work both of them?
20 A Sometimes.
21 Q Did Mr. Foster have a safe in his office?
22 A No, he used my safe if he wanted to use it.

1 Q Both safes in your office were your safes?

2 A Yes.

3 Q There wasn't one that was dedicated to
4 Mr. Foster?

5 A No.

6 Q And you, at least nominally, had access to
7 both of them in terms of knowing the combination?

8 A Yes, and I could open them or my secretary
9 could open them for me.

10 Q Getting into the President's office, your
11 recollection is you had a transcription --

12 A Probably. That's my recollection, yeah,
13 that I had a single-page transcription which maybe
14 was in my jacket pocket or something like that.

15 Q And what did you say to the President?

16 A I already had arranged, by the way, at this
17 time for the Attorney General to come over.

18 Q How did you arrange that?

19 A I had called. By the time I saw the
20 President, which I don't remember what time it was,
21 about 6:00, I already had an appointment or I already
22 had been in contact with the Department of Justice,

316

1 that I wanted to meet with them.

2 Q Wasn't she coming over for something else?

3 A I discovered that. I don't remember who I
4 called. Maybe I called Heymann. My recollection is
5 I called -- my best recollection may be incorrect, is
6 I called Heymann -- no, no, no, no, no. My best
7 recollection is I called the Attorney General.

8 Q Herself?

9 A I may not have reached her. I may have
10 found out -- I don't remember if I reached her on the
11 phone or I discovered, from talking to one of her
12 aides, that she was coming over to the White House
13 anyway. And then I said well, just give her a
14 message that I want to see her and that I think she
15 should have Phil Heymann along.

16 That's my best memory. It could be that I
17 called Heymann and told him to talk to the Attorney
18 General and he did it, but my best memory is I did it
19 the way I just described.

20 Q So you're walking --

21 A And I already had that set up when I walked
22 into the Oval Office.

1 Q And what did you say to the President?

2 A I said you want to see the note, do you
3 want to see the handwritten list?

4 Q What did he say?

5 A He said no, you do whatever you think is
6 right, which is --

7 Q Did you read it to him?

8 A No.

9 Q Do you have any knowledge that he'd ever
10 seen a copy of it?

11 A No.

12 Q Did that strike you as odd?

13 A No. He was emotional. He was -- they were
14 so torn up about Vince's death, that it did not
15 strike me as odd. But I was acting on the
16 assumption -- one of the reasons it didn't strike me
17 as odd is I had read it to McLarty and it's
18 inconceivable to me that McLarty, in one form or
19 another, didn't convey what I read. I offered to
20 show him the document itself -- I don't mean the
21 actual pieces, but what it looked like on a sheet of
22 paper.

1 Q Did McLarty tell you that he hadn't told
2 the President?

3 A No, he hadn't told me that.

4 Q When you walked in there -- this is quite
5 important -- when you walked in there, did the
6 President act surprised that a note had been found?

7 A No.

8 Q Did he indicate that he had prior knowledge
9 a writing had been found?

10 A Yes.

11 Q Did he indicate that he knew what the
12 content of the writing was?

13 A That was the impression I got, yes.

14 Q Did Mr. McLarty ever tell you that he had
15 read or described the content of the writing to the
16 President?

17 A No.

18 Q And your recollection of your conversation
19 with Mr. McLarty the night before was that you didn't
20 read it to him in such a way it would have enabled
21 him to copy it down?

22 A No, I think it did read it to him in such a

1 way that enabled him to copy it down.

2 Q Oh, you think he was copying it down?

3 A I'm not sure -- I don't know. He was on
4 the other end of the phone, but I certainly read him
5 line for line what the note said.

6 Q Did he ask you to repeat words or did he
7 indicate to you in any way that he was copying the
8 note down?

9 A I don't remember.

10 Q Is it honestly your impression you think he
11 was transcribing and copying it down?

12 A No, I'm not sure -- I don't have an
13 impression with respect to that one way or the
14 other. I just don't remember one way or the other.

15 Q Did he ever tell you that he had made a
16 decision not to tell the President about it until he
17 saw the note with the writing himself?

18 MR. PEDOWITZ: Could we have that question
19 read back.

20 (The reporter read the record as requested.)

21 THE WITNESS: No.

22 BY MR. CHERTOFF:

1 Q But in your encounter with the President in
2 the Oval Office on Tuesday evening, July 27th, the
3 President indicated he did not want to see the note?

4 A Yes.

5 Q And he did not tell you that he had ever
6 seen its contents earlier or that its contents had
7 been read to him earlier?

8 A He did not tell me that, but my impression
9 was that he was aware of the contents.

10 Q Where did you get that impression?

11 A I don't know. Just from what -- I think he
12 said something to the effect of Bernie, I know all
13 about it. I said do you want to see the note,
14 something to these words; Bernie, I know about it or
15 I know all about it. Do what you think is right.

16 Q In terms of people --

17 A Something like that, you know -- I don't
18 have the exact words but something like that.

19 Q By this point in time, just so I get it
20 straight, in terms of the people that you -- let me
21 withdraw the question.

22 You had possession of the note from the

1 time, let's say, you spoke to Mr. McLarty on the
2 evening of 26th or late afternoon of the 26th up
3 until the time that you went into the Oval Office on
4 the 27th; right?

5 A Correct.

6 Q Were you the only person who made a
7 transcribed writing of it?

8 A I'm not sure of that. Neuwirth may have
9 had one or I may have had a transcribed writing made
10 and Xeroxed it and Neuwirth had a copy.

11 Q Who did you give it to?

12 A The only people -- Neuwirth might have had
13 a copy. I don't know if he did or didn't. Maybe I
14 gave a copy to Burton.

15 Q Well, it was your purpose to keep it a very
16 close hold --

17 A Yeah, it wasn't designed to be discussed
18 with everybody in the White House, that's correct.

19 Q In fact, the very purpose of not telling
20 the Department of Justice was so that it wouldn't
21 leak out; right?

22 MR. BEN-VENISTE: I don't think that was

1 the testimony.

2 BY MR. CHERTOFF:

3 Q So that Mrs. Foster could get to see it
4 first; is that more correct?

5 A Yes, Mrs. Foster and the President if he
6 wished to see it, that's correct.

7 Q So your state of mind was that, apart from
8 Mr. Neuwirth and Mr. Burton and Mr. McLarty who, so
9 far as you were aware, were the only people with
10 knowledge of the content of the note besides
11 yourself, that the next person who ought to see it
12 is -- other than maybe another couple people in the
13 immediate circle at the White House was Mrs. Foster;
14 right?

15 A Yes.

16 Q And incidentally, did you bring a
17 transcription of the note to the meeting with
18 Mr. Gergen and Mr. McLarty and Mr. Burton on the
19 morning of the 27th?

20 A I don't remember, but I would say probably.

21 Q Was there discussion in that meeting about
22 how you'd deal with the media aspect of all this?

1 A There probably was. I don't remember the
2 discussion very much, but I have no -- I'd be
3 surprised if there wasn't such a discussion about
4 ultimately how we're going to have to deal with the
5 media.

6 Q Was there a discussion about how and when
7 the note would be released to the public?

8 MR. PEDOWITZ: At that meeting?

9 MR. CHERTOFF: At that meeting.

10 THE WITNESS: There may have been. There
11 was a discussion whether we could release it or we'd
12 have to get permission from the Department of Justice
13 before we released it. There may have been that kind
14 of discussion. There were certainly discussions
15 after we turned it over to the Department of Justice
16 about that.

17 There was a group of people in the White
18 House who really urged that we release it as soon as
19 possible because it was going to get out one way or
20 the other, but the Department of Justice was urging
21 us not to do it. But I don't remember that -- those
22 are discussions after we turned over the note.

1 BY MR. CHERTOFF:

2 Q I'm focusing on before the note was turned
3 over. Was there discussion how and when it would be
4 released to the media?

5 A There may have been but I have no
6 recollection of a specific discussion.

7 Q As of the time you went into the
8 President's office, was it your understanding that
9 the universe of people who had knowledge of and a
10 copy of the content of the note --

11 A Knowledge or a copy of the content of the
12 note.

13 Q I'll break it into two parts. To your
14 knowledge, the people who may have had an actual copy
15 of the content of the note were yourself; correct?

16 A Yes.

17 Q Maybe Mr. Neuwirth?

18 A Maybe.

19 Q Maybe Mr. Burton?

20 A Right.

21 Q Anybody else?

22 A Probably not.

1 Q To your knowledge, did Mr. Burton go in to
2 see the President at any point to tell him about the
3 note or show it to him before you went in to see him
4 on the 27th?

5 A I have no knowledge of that. I don't know.

6 Q And certainly, you know Mr. Neuwirth didn't
7 go in without you to tell the President about the
8 note?

9 A No, Mr. Neuwirth didn't go in.

10 Q Now, in terms of additional people who had
11 knowledge of the content of the note, there was
12 Mr. McLarty to whom you read the note; correct?

13 A Correct.

14 Q And then who else was there?

15 A Mr. Gergen.

16 Q And when did you tell Mr. Gergen?

17 A Mr. Gergen was with Mr. McLarty.

18 Q On the morning of the 27th?

19 A He was with Mr. McLarty in Chicago.

20 Q To your knowledge, did Mr. Gergen go in to
21 tell the President -- let me withdraw the question.

22 When you had your meeting at about 10:00 in

1 the morning on Tuesday, July 27th with Gergen,
2 McLarty, Burton and Neuwirth, was it your
3 understanding the President had not yet been shown
4 the note?

5 A I didn't believe at that point the
6 President had been shown the note but I thought it
7 was highly likely he knew the contents of the note.
8 I had told it to McLarty the day before. Gergen was
9 with him. They were traveling back on the airplane
10 from Chicago. I believed -- it was likely the
11 President knew the contents and hadn't seen a copy of
12 the note. That's what I believed on the 27th.

13 Q And to your knowledge, the way in which
14 Mr. McLarty or Mr. Gergen could have communicated the
15 content of the note was by means of anything they
16 wrote down at the time you read it to Mr. McLarty?

17 A Or they remembered. It wasn't that long a
18 document. You can read -- you read it to somebody,
19 they remember -- they may not remember it word for
20 word but they remember the thoughts and they could
21 have conveyed that.

22 Q So that other than --

1 A Vince left a handwritten list expressing he
2 was concerned about A, B, C, D and E. They could
3 remember that and convey it to the President. I
4 don't know if they did that, but that could have
5 been --

6 Q To your knowledge, the only people who
7 would have been in the position to tell the President
8 about the content of the note before you went into
9 the Oval Office on the 27th, starting from the period
10 when Mr. Neuwirth -- when you encountered
11 Mr. Neuwirth with the note on the 26th, the only
12 people that could have gone in there and told him
13 about it before you did were Mr. Gergen, Mr. McLarty,
14 Mr. Neuwirth, Mr. Burton and yourself; right?

15 A Mrs. Clinton.

16 Q If Mrs. Clinton read it --

17 A Or Mrs. Clinton had discussed it with one
18 of us. She didn't discuss it with me but she could
19 have discussed it with McLarty. She could have
20 discussed it with Burton.

21 Q So other than those people, you have no --
22 there's no one else who, to your knowledge, had any

1 knowledge of the content of the note from the time
2 that you first encountered it with Mr. Neuwirth on
3 the 26th up until the time you spoke to the President
4 on the 27th; correct?

5 MR. PEDOWITZ: We've mentioned Jim Hamilton
6 and Lisa Foster.

7 MR. CHERTOFF: We'll come back to that.

8 THE WITNESS: Thank you. I called
9 Hamilton, yes, Jim Hamilton and Lisa.

10 BY MR. CHERTOFF:

11 Q You have no reason to believe Lisa Foster
12 told the President about the content of the note?

13 A I have no reason to believe it.

14 Q And you have no reason to believe Jim
15 Hamilton told the President?

16 A I had no reason to believe that, but Jim
17 Hamilton had his own relationship with the President
18 and they talked from time to time, and it's not
19 inconceivable that Hamilton was known by the
20 President, he was very well known, and respected by
21 the President but I have no reason to believe they
22 had a conversation about that.

1 Q You didn't give Mr. Hamilton a copy of the
2 today?

3 A I didn't give him a copy of the note but I
4 read it to him over the phone and to me, knowing Jim
5 Hamilton, he wrote down what I was reading.

6 Q When he came in the next day, didn't you
7 show him the note?

8 A Yes.

9 Q Didn't he come in in the morning to look at
10 it?

11 A Yes.

12 Q Did he tell you he had copied it down the
13 night before?

14 A I don't remember what he said. One thing
15 to copy it, one thing to look at it.

16 Q There's an element to looking at the note
17 that conveys much more than just reading the content
18 as someone has copied it down; correct?

19 A There is an element. There is an
20 additional element when you look at the document,
21 yes, that's correct. I don't know how much that
22 departs from the contents; also important.

1 Q Where did you meet the Attorney General and
2 Mr. Heymann -- and I'll stop in a minute -- where did
3 you meet the Attorney General and Mr. Heymann later
4 on the 27th?

5 A In Mr. McLarty's office.

6 Q Was anybody else there?

7 A Mr. McLarty was there, I think.

8 Q Anybody else?

9 A Neuwirth, I think, was with me most of the
10 time.

11 Q What was the conversation?

12 A I told the Attorney General that we had
13 found something that I thought should be turned over
14 to the appropriate law enforcement authorities. It
15 was a torn-up sheet of paper, which we had pieced
16 together, and it reflected things that were bothering
17 Mr. Foster. I didn't know if it was a suicide note
18 or not, but it was the kind of thing we were
19 searching for on the 22nd. And I thought law
20 enforcement should have it and I wanted her to have
21 it to give it to whoever she thought was appropriate.

22 Q What did she say?

1 A She said -- she was taken aback a little
2 bit. She was a little surprised by this thing. It
3 was sort of -- she had sort of a shock reaction and
4 her reaction was I don't think I'm the person you
5 should hand it to. You should give it to the people
6 doing the investigation, namely the Park Police. And
7 I said if that's what you believe, which is logical,
8 I said I'd be glad to do it. And Heymann then went
9 over to the phone to call the Park Police to ask them
10 to come over to the White House, and I said fine,
11 we'll wait for the Park Police. And she shortly
12 thereafter left while Heymann, I think, remained
13 waiting for the Park Police.

14 Q Was there any discussion before she left,
15 any other discussion you remember?

16 A No.

17 Q Did you raise with her --

18 A That was the substance of the discussion.

19 Q Did you raise with her any questions about
20 who should see the note or how it should be handled
21 or privilege?

22 A No.

1 Q There was no dispute?

2 A No dispute with her?

3 Q Yes.

4 A No.

5 Q No disagreement about how it should be
6 handled?

7 A Handled in the future?

8 Q No, how they ought to handle the note you
9 were telling her about?

10 MR. PEDOWITZ: He's described a discussion
11 in which she said it should be turned over to the
12 Park Police.

13 BY MR. CHERTOFF:

14 Q Up to that point in time, was there any
15 disagreement or question you were raising about how
16 the note ought to be handled?

17 A I didn't make any suggestions about how it
18 ought to be handled. I was in the act of turning it
19 over to her. I wasn't saying here it is and you
20 should handle it A, B, C and D. No, here it is.

21 Q Did you tell her when the note was located?

22 A When?

1 Q Yes.

2 A Yeah, I told her. I think I told her.

3 Q What did she say?

4 A I don't remember. She may have said why
5 did you wait a day. I don't really remember this but
6 if she did say it, I gave her the reason. Other
7 people who were there can testify about this, too.
8 She said why did you wait 24 hours or something like
9 that. If she asked that question I said because I
10 wanted Lisa to see it and I wanted the President to
11 see if he wanted to see it. That's what I would have
12 said to her, but I don't remember if we had that
13 colloquy.

14 Q Did Mr. Heymann say anything about the
15 delay in the note?

16 A No.

17 MR. PEDOWITZ: The delay?

18 MR. CHERTOFF: In turning over the note.

19 THE WITNESS: No.

20 BY MR. CHERTOFF:

21 Q Did you indicate in the conversation the
22 note had been found in the briefcase?

1 A I think so, yes.

2 Q Did Mr. Heymann say anything about the fact
3 that it had been found in the briefcase which had
4 been in the room on the 22nd?

5 A No.

6 MR. CHERTOFF: I think this is a good point
7 to stop.

8 (Whereupon, at 6:10 p.m., the deposition
9 was adjourned, to reconvene at 9:30 a.m., on
10 Thursday, July 13, 1995.)

11

12

13

BERNARD W. NUSSBAUM

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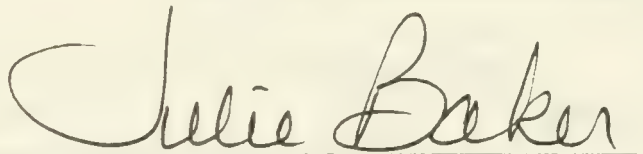
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

335

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

**DEPOSITION OF HOWARD G. PASTER
IN RE: S. RES. 120**

WEDNESDAY, JULY 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of HOWARD G. PASTER, called for examination pursuant to notice of deposition, at 4:20 p.m. in Room SC-10 of the Capitol, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
LANCE COLE, Esq.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

RANDALL J. TURK, Esq.
DAVID S. COHEN, Esq.
Miller, Cassidy, Larroca & Lewin
2555 M Street, NW
Washington, DC 20037
On behalf of the Deponent.

CONTENTS

WITNESS

EXAMINATION

| | |
|----------------------|----|
| Howard G. Paster | |
| by Mr. Johnson | 3 |
| by Mr. Cole | 45 |

1 PROCEEDINGS

2 Whereupon,

3 HOWARD G. PASTER

4 was called as a witness and, having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q Good afternoon, Mr. Paster. We've had an
9 opportunity to meet off the record briefly.10 Let me officially reintroduce myself to
11 you. My name is Everett Johnson. I'm one of the
12 attorneys representing the majority members of the
13 special Senate committee investigating Whitewater and
14 related matters.15 What brings us here today is Senate
16 Resolution number 120, which creates that committee
17 and directs the staff to conduct an investigation
18 into certain matters. In particular today, we'd like
19 to talk about the handling of the documents in Vince
20 Foster's office in the days surrounding his death on
21 July 20, 1993. So the questions that I ask you, or
22 that Mr. Cole may ask you, will relate hopefully to

4

1 that topic.

2 Let me just ask you preliminarily whether
3 or not you've been deposed in the past. I'm not
4 referring to this particular subject, but just ever.

5 A Yes.

6 Q You're well familiar with procedures in a
7 deposition. I'll just review for us a couple of the
8 important ones.9 Since a verbatim transcription is being
10 made, it's important that we not speak
11 simultaneously. It's also important that you answer
12 questions verbally, rather than with non-verbal forms
13 of communication.14 If you need to confer with your counsel or
15 take a break, feel free to say so. We can do that at
16 any time. And if you're confused about a question
17 which I ask, which undoubtedly will happen, I rely on
18 you a little bit to tell me that the question didn't
19 make sense.20 I take it that you had an opportunity to
21 meet with your counsel in preparing to testify here
22 today?

1 A Yes.

2 Q And no one was present other than the
3 attorneys who represent you personally. Is that
4 correct?

5 A Correct.

6 Q Have you met with anyone else to discuss
7 the deposition testimony you're going to give here
8 today?

9 A No.

10 Q Could you take 30 seconds or so and just
11 describe your professional background, commencing
12 with the ending of your full-time schooling?

13 A I came to Washington directly from
14 graduate school in 1967. I was employed as an aide
15 to a fellow who's no longer in Congress from 1967 to
16 1971. In 1971, the fall of '71, I went to work for
17 then-Senator Birch Bayh of Indiana. I remained on
18 Senator Bayh's staff until February of 1977, at which
19 time I became the legislative director of the United
20 Auto Workers union, the UAW.

21 I was there until May, the spring of 1980,
22 when I joined Timmons and Company, a Washington

1 public affairs firm, where I remained until October
2 1, 1992. At that time, I took a position as head of
3 the Washington office of Hill and Knowlton, and as
4 chairman of Hill and Knowlton's public affairs
5 company. But I left there two months later on leave
6 of absence, on December 1, 1992. And from then until
7 January 20, 1993, I served on the Clinton-Gore
8 transition committee.

9 On January 20, 1993, I assumed my position
10 in the White House as assistant to the President and
11 director of legislative affairs. I remained in that
12 position until the end of 1993. And from January of
13 1994 to the present, I've been the chairman and chief
14 executive officer of Hill and Knowlton.

15 Q Thank you.

16 Prior to joining the transition team -- I
17 think you said on December 1 of '92; am I correct?

18 A Yes.

19 Q What involvement, if any, had you had in
20 the Clinton campaign?

21 A In the period leading up to the convention
22 in 1992, I volunteered to help the Clinton campaign

1 here in Washington. One of the important tasks in
2 the campaign is dealing with the so-called
3 superdelegates. Most of the members of the Congress
4 in the Democratic Party are automatically made
5 delegates to the convention.

6 Because of my experience with members of
7 Congress, I took on a role helping with the
8 superdelegates. I was one of a fairly large team of
9 folks who, at the convention in New York in '92, had
10 delegate relations responsibilities, and I did that.
11 After the convention, I didn't have a very active
12 role in the campaign. I was always here in
13 Washington. I was available on ideas or discussions,
14 but -- some liaison with the Congress. That was it.

15 Q Your first full-time involvement with the
16 new Administration was as a member of the transition
17 team?

18 A Correct.

19 Q Did you have a title on the transition
20 team?

21 A There was one. The answer is yes.

22 Q That's good deposition technique.

1 (Laughter.)

2 THE WITNESS: Is he going to ask which one
3 it is?

4 (Laughter.)

5 BY MR. JOHNSON:

6 Q You guessed it.

7 A I don't recall what the answer is.

8 Q You don't recall today what that title
9 was?

10 A I really don't think so.

11 Q Was there a particular person or persons
12 to whom you reported?

13 A I was hired by Warren Christopher. That
14 was my principal reporting line.

15 Q After President Clinton was inaugurated in
16 January 1993, you assumed your position as assistant
17 to the President and director of legislative affairs.
18 Is that correct?

19 A Correct.

20 Q Would you tell us what your job duties
21 were at that time?

22 A The position is that of the President's

1 chief liaison with Congress. My responsibility was
2 to both represent the President's interests in the
3 Congress and to manage the staff that did that, but
4 also to provide for the Administration, the President
5 and others, inside intelligence, guidance, and other
6 dealings with Congress.

7 Q Mr. Paster, to whom did you report in that
8 job?

9 A To Mac McLarty, chief of staff.

10 Q Did your job responsibilities in the
11 White House from time to time bring you into contact
12 with the White House counsel's office?

13 A Yes.

14 Q I'm not searching for any false precision
15 here. But frequently, infrequently, something in
16 between?

17 A It was issue-driven.

18 Q So sometimes a lot, but there were periods
19 of time when you didn't have that?

20 A Exactly.

21 Q Did you know Mr. Nussbaum personally?

22 A Not before we went to the White House. Is

10

1 the question asking me, at the White House did I know
2 him personally? Yes.

3 Q What about Mr. Foster? Did you know Mr.
4 Foster personally?

5 A During the time we were at the White House
6 together, yes.

7 Q The question I'll ask will be the same for
8 all of these individuals. And that is, would you
9 have recognized them on July 20, 1993?

10 Obviously, you'd have recognized the
11 President and the First Lady.

12 A Yes.

13 Q Mr. Nussbaum I take it you would have
14 recognized.

15 A Yes.

16 Q Cliff Sloan?

17 A I'm not sure.

18 Q Another assistant to Mr. Nussbaum, Steve
19 Neuwirth.

20 A I'm not certain.

21 Q Did there come a time some time after the
22 20th of July 1993 when you came to know or recognize

1 Mr. Sloan and Mr. Neuwirth?

2 A I had some business with both of them, but
3 very little. You're talking about recognition, and
4 it was a couple of meetings.

5 Q Maybe, maybe not?

6 A Yes.

7 Q Maggie Williams?

8 A Yes.

9 Q In the course of your job duties as
10 assistant to the President, did you have any
11 responsibilities with respect to the First Lady or
12 the First Lady's staff?

13 A To the extent that the First Lady was
14 given the responsibility for the health care
15 legislation, I interacted with her and people who
16 worked for her on health care. I assigned one of my
17 staff to work with them full-time, and at various
18 junctures I got called in to some of the strategy
19 discussions.

20 Q I diverted. But you would have recognized
21 Ms. Williams on July 20?

22 A Yes.

1 Q Patsy Thomasson?

2 A Yes.

3 Q Evelyn Lieberman?

4 A Yes.

5 Q At that time, did you know a uniformed
6 division Secret Service officer by the name of
7 O'Neill?

8 A No. I take it you're asking me if I would
9 recognize him.

10 Q Yes.

11 A Yes. I didn't know the name.

12 Q David Watkins?

13 A Yes.

14 Q William Kennedy?

15 A Yes.

16 Q Mr. McLarty obviously you'd recognize.

17 A Yes.

18 Q I assume you'd recognize Ms. Myers, Dee
19 Dee Myers?

20 A Yes.

21 Q I also assume you'd recognize Mr. Gearan
22 and Mr. Gergen?

1 A Correct.

2 Q William Burton?

3 A Yes.

4 Q Mr. Paster, in case I forgot to mention
5 it, I want to focus now specifically on July 20,
6 1993, which was a Tuesday, the day that Mr. Foster
7 died. So unless I indicate otherwise, just assume
8 for the next group of questions that that's the day
9 we're talking about.

10 Were you at work at the White House on
11 that day?

12 A Yes.

13 Q Did you leave the White House before
14 learning of Mr. Foster's death?

15 A Yes, I did.

16 Q How did you learn of Mr. Foster's death?

17 A I was at home and received a call from
18 George Stephanopoulos asking me to return to the
19 White House. He explained to me that Vince had been
20 found dead.

21 Q Did Mr. Stephanopoulos indicate why he
22 wanted you to return to the White House?

1 A No, he didn't raise it specifically.

2 Q Did you have any understanding of why,
3 whether or not he raised it?

4 A Well, there always were questions of
5 whether or not, on any event occurring inside the
6 White House, whether or not we would have to do
7 Congressional notifications. Just about anything
8 that transpired, whether it was a foreign policy
9 matter, whether it was an appointment, a pending
10 announcement of an appointment -- anything that was
11 significant, do we need to notify the Congressional
12 leadership? So that question always arose.

13 The second reason, which was more
14 particular to that situation, was that I knew that
15 the President's appointments next morning were with
16 members of Congress. They were early appointments,
17 and it seemed logical that we'd have to consider
18 whether we would do anything about that.

19 Q After you spoke with Mr. Stephanopoulos,
20 is the next thing that you did actually return to the
21 White House?

22 A My best recollection is that I changed my

1 clothes again. I think I changed. I didn't get my
2 suit back on, but I think I did something better than
3 what I had on.

4 Q Did you communicate with anyone other than
5 perhaps members of your family before returning to
6 the White House on the topic of Mr. Foster's death?

7 A Not that I can recall.

8 Q Do you recall what time you physically
9 arrived back at the White House?

10 A I'm not certain.

11 Q Just as a frame of reference, do you have
12 any idea whether it was before or after 10 p.m.?

13 A My best judgment is that it would have
14 been after 10 p.m.

15 Q I take it, Mr. Paster, that you have a
16 White House pass that enables you to come and go
17 freely from the White House?

18 A I did in those days.

19 Q Did you also park on West Executive
20 Avenue?

21 A I did.

22 Q So there wouldn't be any record that would

1 refresh your recollection anywhere about what time
2 you entered, necessarily?

3 A No.

4 Q What did you do after you arrived?

5 A I went to the first floor of the West
6 Wing, and somebody told me that there were some folks
7 over in the basement of the residence, and I
8 continued over to the basement of the residence,
9 where I encountered a small number of people at the
10 Secret Service post. They were just there, I mean
11 just outside the Map Room of the residence. It's
12 across from the elevator.

13 Q I infer, perhaps from the tone of your
14 answer, that you don't today recall who told you
15 there were people assembled in the basement of the
16 residence.

17 A That's correct. I'm not certain.

18 Q Who did you see in the basement of the
19 residence?

20 A I saw Mr. Nussbaum. I believe I saw David
21 Dreyer.

22 Q Who is Mr. Dreyer?

1 A He was an assistant director of
2 communications who worked for Mr. Gearan. My best
3 recollection is that Gene Sperling was there.

4 Q Sperling?

5 A Sperling.

6 Q Is that a man or a woman?

7 A That's a man, G-e-n-e. He worked on the
8 National Economic Council.

9 Mr. Stephanopoulos, I believe, was there.
10 As far as I can recall, that is I believe who was
11 there. I'm pretty sure Mr. Nussbaum was there. I
12 believe the others were there as well.

13 Q Was Ms. Myers there?

14 A Not that I can recall.

15 Q I think, unless I misunderstood you, you
16 said that they were gathered outside the Secret
17 Service post in the basement?

18 A Just at it. There's a phone, and a man
19 sits there.

20 Q Did you join the group?

21 A I did.

22 Q What do you recall was discussed after you

1 joined?

2 A There was very little discussion. It was
3 really a case of people really sort of commiserating
4 with each other. I specifically expressed
5 condolences to Mr. Nussbaum because of his relation
6 with Mr. Foster. Everybody was behaving as they do
7 at times like that. There wasn't substantive
8 discussion. There was just sort of -- commiseration
9 would be a fair characterization.

10 Q Other than ordinary commiseration and
11 condolences at a time of tragedy, do you remember
12 anything else about the conversation?

13 A I believe that Mr. Nussbaum was on the
14 phone dealing with issues regarding the hospital, or
15 wherever it was that Mr. Foster's body had been
16 taken. He was doing some business on the phone. I
17 wasn't privy to exactly what it was.

18 Q Do you have any understanding of who he
19 was talking to?

20 A I don't know who he was talking to.

21 Q Other than that, do you recall anything
22 else about the conversations that might have taken

1 place in this gathering in the vicinity of the Secret
2 Service post?

3 A No. It broke up fairly quickly. We went
4 back to the West Wing.

5 Q While in the basement of the residence,
6 did you see the President?

7 A Yes.

8 Q He was on live television with Larry King
9 that evening, as I understand it. When you arrived
10 at the White House, was he still on television?

11 A I don't believe so. I didn't watch Larry
12 King that night, so I don't know. But I don't
13 believe so.

14 Q How long after you arrived at the White
15 House did you see the President?

16 A I don't know. It was not very long,
17 because he left the building and, with most of the
18 others, had gone back over to the West Wing.

19 Q Did you have any substantive conversations
20 with the President, or just more of the condolences?

21 A I had no conversation with the President.

22 Q You just observed him?

1 A Exactly.

2 Q Where did you go, Mr. Paster, after you
3 returned to the West Wing?

4 A I recall being in that period thereafter
5 on the first floor of the West Wing. I was certainly
6 in Mr. Gearan's office for part of the time. I was
7 in the area of the chief of staff's office for part
8 of the time. You know the layout well, probably by
9 now. Cutting between the Roosevelt Room, there's a
10 fairly direct way to get between the two of them, and
11 then to go up that narrow corridor up to the chief of
12 staff's office.

13 I know that for some period of time, I
14 know I was between those two places.

15 Q Is it your best recollection that you went
16 first to Mr. Gearan's office?

17 A I don't want to say with certitude.

18 Q Putting aside for a moment the order of
19 the offices which you went in, who was in Mr.
20 Gearan's office when you were there?

21 A During the course of the evening?

22 Q Yes.

1 A Mr. Gearan was there. I believe that Mr.
2 Dreyer was there at some point. I know Mr. Nussbaum
3 was there at some point. I'm certain that Maggie
4 Williams was there at some point. And there may have
5 been many others. Mr. Gearan's office has a lot of
6 seats. Some people came and went during the night.
7 I know others were there, but I told you people who I
8 know. Sylvia Matthews of the National Economic
9 Council was there at least part of the time.

10 There were others. But I've given you the
11 names of people I can recall having had conversations
12 with or seen specifically.

13 Q Do you recall seeing Patsy Thomasson in
14 Mr. Gearan's office at any point?

15 A No.

16 Q Do you recall seeing Patsy Thomasson in
17 the White House that evening at any point?

18 A Yes, I do.

19 Q Where do you first recall seeing Ms.
20 Thomasson?

21 A The only recollection that I have -- I
22 believe this is my best recollection -- is that at

1 some point when I was going to or from the chief of
2 staff's office, I saw Patsy Thomasson in a corridor
3 which runs between the Oval Office and the chief of
4 staff's office. And then I feel fairly certain that
5 I saw her in that corridor with one or two others at
6 some point during the evening.

7 Q In the course of that evening, did you
8 ever speak with Mrs. Thomasson?

9 A Not that I recall. I'm sorry?

10 Q You are certain you didn't have any
11 substantive conversations with her?

12 A Correct.

13 Q When you observed her in the corridor at
14 some time on the evening of the 20th, who was she
15 with?

16 A I think she was with Deborah Coyle. But I
17 don't think that was certain. She was Bruce
18 Lindsey's assistant, and his office at that time was
19 in that corridor. So I'm making sort of a
20 conjecture.

21 But I think she may have been there, and I
22 think it's possible -- although I have to qualify

1 this -- it's possible Nancy Hernreich might have been
2 there. I don't want to say that with certitude.

3 Q Who is Ms. Hernreich?

4 A Personal assistant to the President.

5 Q Do you recall anything about the
6 conversations that took place in Mr. Gearan's office
7 on that evening?

8 A Some of it.

9 Q Just tell what you recall.

10 A There was a discussion, which I wasn't
11 essential to at all, about how to announce Vince
12 Foster's death, and when to announce it.

13 Q To the public?

14 A Yes. There was a specific concern I
15 recall, because it was kind of poignant. At that
16 time I believe Vince's mother was alive. I don't
17 know if she is today. There was a concern about
18 public announcements before somebody in Arkansas
19 could get to the older Mrs. Foster. So they wanted
20 to make sure they didn't have it announced or leak
21 even prematurely, lest she get media calls and learn
22 of her son's death that way. I just remember that

1 particular episode.

2 There was also some conversation about
3 what the Park Police were going to say about the
4 circumstances under which Mr. Foster's body had been
5 found, and some conversation about that as well.

6 I recall also a conversation about the
7 retention of Mr. Foster's garbage.

8 Q What do you recall about the conversation
9 concerning the retention of Mr. Foster's garbage?

10 A At some point during the evening, Ms.
11 Matthews had asked me, didn't I think we ought to
12 save Mr. Foster's garbage. And I said to her that I
13 thought indeed they should. It seemed logical. I'm
14 not an attorney, but it didn't take a lot to figure
15 it out.

16 MR. TURK: Excuse me. Is this happening
17 in Mr. Gearan's office? I think that's what the
18 question is.

19 THE WITNESS: No.

20 MR. TURK: The conversation in Gearan's
21 office about retention.

22 MR. JOHNSON: That was the question.

1 BY MR. JOHNSON:

2 Q Was this conversation later in the chief
3 of staff's office?

4 A The one that started in the chief of
5 staff's office?

6 Q The same question about the chief of
7 staff, but just to compartmentalize it in my mind, do
8 you recall anything else about the conversation in
9 Mr. Gearan's office?

10 A At some point during the evening, and the
11 sequence gets complicated -- at some point during the
12 evening, I know Mr. Gearan had a conversation with
13 somebody in the residence -- a staff person, not the
14 President -- in which he was confirming that the
15 garbage was being retained.

16 I believe my recollection is --

17 Q Somebody in whose residence?

18 A Over in the White House residence.

19 Q I'm sorry, Mr. Paster. I probably wasn't
20 listening carefully enough.

21 You think that Mr. Gearan had a
22 conversation with someone in the White House

1 residence on the topic of retaining Mr. Foster's
2 garbage?

3 A My best recollection -- and I have to say
4 I'm trying to rebuild this, okay?

5 Q I understand it's two years ago.

6 A I believe that, at some point, Mark
7 talking with -- I can tell you it was one of two
8 people. I have no idea who he was talking to, but I
9 believe either with David Gergen or Mac McLarty.
10 Those are the only two people I knew were over there
11 whom he might have spoken to about the subject. And
12 Mark had reporting lines to both of them. I thought
13 at some juncture he had a phone conversation with one
14 of them, sort of saying that they had retained Mr.
15 Foster's garbage or confirmed that they were going to
16 retain Mr. Foster's garbage.

17 MR. JOHNSON: Off the record.

18 (Discussion off the record.)

19 BY MR. JOHNSON:

20 Q In an off-the-record conversation, you've
21 been kind enough, Mr. Paster, to help us understand
22 the time frame of reference to these various

1 conversations. Tell me if I have this incorrectly.

2 You are moving back and forth on the
3 evening of the 20th between the chief of staff's
4 office and Mr. Gearan's office, and perhaps other
5 locations in the West Wing. Is that correct?

6 A That is correct.

7 Q So when I've asked you conversations that
8 may have occurred in Mr. Gearan's office, some of
9 those may have occurred before or after your visit to
10 the chief of staff's office that evening?

11 A That is also correct.

12 Q Let me then just ask you about the first
13 time you recall the topic of Mr. Foster's trash or
14 garbage being discussed. Is that the conversation
15 with Sylvia Matthews that you earlier described?

16 A Correct.

17 Q And that was in the chief of staff's
18 office?

19 A The reception area of the chief of staff's
20 office.

21 Q And you indicated to Ms. Matthews that you
22 thought it was a good idea to recover Mr. Foster's

28

1 trash?

2 A Correct.

3 Q Do you recall anything else about that
4 conversation?

5 A Sylvia indicated to me that there was a
6 discussion about this, and how to proceed. I can't
7 recall the specifics. I do know that the garbage was
8 retained, because I in fact saw her with garbage on
9 the floor later. So whatever issue was being
10 discussed or being debated, whatever, it was moot,
11 because I know she got the garbage.

12 Q Were you at any time on the evening of the
13 20th present during any discussions about whether or
14 not to lock or seal or secure Mr. Foster's office?

15 A Not that I recall.

16 Q Just in an effort to refresh your
17 recollection, if perchance you were present, you
18 don't recall discussing that topic in the presence of
19 Mr. Nussbaum?

20 A I don't.

21 Q Did anyone ever say or indicate to you one
22 way or another that evening that Mr. Foster's office

1 had been or would be sealed?

2 A Not that I recall.

3 Q So I'm safe in assuming that in your
4 recollection, the topic just didn't come up?

5 A I certainly don't remember being part of
6 any discussion of that.

7 Q I think my original tack of trying to
8 identify which conversations may have taken place in
9 which offices is not helpful, because of your
10 movements that evening. So let me just ask you about
11 conversations that you recall, without necessarily
12 trying to place where.

13 You've discussed that there were
14 conversations about how to announce to the public Mr.
15 Foster's death?

16 A Right.

17 Q You've told me that there were
18 conversations about what, if anything, the Park
19 Police might announce.

20 A Correct.

21 Q You've also mentioned that the
22 conversations that you've just described relating to

1 the recovery of the trash from Mr. Foster's office --
2 do you recall any other substantive conversations
3 other than ordinary condolences or expressions of
4 grief?

5 A No. There was idle speculation about what
6 might have caused Vince to commit suicide. But there
7 was no substantive conversation, whatever.

8 Q Was there any discussion in your presence
9 about a suicide note on the evening of the 20th?

10 A Not that I recall.

11 Q Did Mr. Nussbaum or anyone else indicate
12 to you on the evening of the 20th whether or not
13 anyone had been in Mr. Foster's office after his
14 death?

15 A I don't recall any conversation about
16 that, Mr. Johnson.

17 Q Now, at any time, Mr. Paster, on the
18 evening of the 20th, did you have an occasion to go
19 up to the second floor of the West Wing of the White
20 House?

21 (Pause.)

22 A I can't recall precisely doing that. But

1 I logically would have. It's hard for me -- my
2 office is on the second floor, and having returned to
3 the White House, it is my way and nature that it's
4 difficult for me to believe that I would not have
5 gone up to the second floor, although I can't
6 remember doing anything specific in my office.

7 Q Where is your office physically located on
8 the second floor? It is easiest for my comprehension
9 if you will describe it in relation to its proximity
10 to the White House counsel's office.

11 A If you proceed straight out of the
12 reception area of the White House counsel's office
13 till you go past the stairs over there, and you hit a
14 dead end, and make a left, you enter the reception
15 area, which is shared by the Intergovernmental
16 Affairs office and the Congressional Affairs office.
17 You then turn right and then right again into my
18 office. And my office was directly -- the office I
19 had at Congressional Relations is directly over the
20 entrance to the West Lobby, over the door that
21 everybody recognizes.

22 Q If I followed that, you can't see the

1 White House counsel's office from your office.

2 A No, sir.

3 Q When you go up the stairs from the lower
4 floors of the White House to the second floor of the
5 White House, did you typically go up the stairs
6 closest in proximity to the White House counsel's
7 office?

8 A There is only one set of stairs, and it
9 was in between the two, right in the middle of the
10 corridor when you came out of it.

11 Q If my memory serves, that stair comes up
12 right beside the White House counsel's office.

13 A No, sir. There's an elevator that's
14 between the stairwell and the White House counsel's
15 office. It comes up in the middle of the corridor,
16 midway between the White House counsel's office and
17 the reception area, maybe a third of the way -- maybe
18 40 percent, 60 percent. But no, there's an
19 intervening elevator.

20 Q Can you see the White House counsel's
21 office from the stairs as you walk out of the stairs?

22 A If you come out of the stairs, you're of

1 course facing directly into a wall. And then if you
2 turn to the right, you can see into the reception
3 area of the White House counsel's office.

4 Q At any time on the evening of the 20th,
5 did you go into the White House counsel's suite, or
6 did you walk in the vicinity of the White House
7 counsel's suite?

8 That's just a long way of saying, were you
9 down at that end at that time?

10 MR. COLE: We should break that one in
11 two, and make it easier for the witness.

12 MR. JOHNSON: Let me just strike the whole
13 thing. It was just terrible.

14 BY MR. JOHNSON:

15 Q Did you enter the White House counsel's
16 suite at any time on the evening of the 20th?

17 A Not that I recall.

18 Q Even though you don't think that you
19 entered it, do you recall being in the vicinity of
20 the White House counsel's suite at any time on the
21 evening of the 20th?

22 A The vicinity? Help me.

1 The corridors are very long. If you come
2 off the stairs -- I'm not good on distances, but
3 you're certainly within 30 feet, probably 25 feet.

4 MR. TURK: The problem with the question,
5 though, is that he doesn't have any recollection of
6 having been on the second floor.

7 MR. JOHNSON: I understand.

8 BY MR. JOHNSON:

9 Q Mr. Turk's point is, if you don't recall
10 being on the second floor, then you're not going to
11 recall much about the particulars of having been
12 there.

13 Mr. Paster, just so you won't think I've
14 got some miraculous revelation coming here -- I don't
15 -- we have testimony from witnesses that say that
16 they may have observed you, not in the White House
17 counsel's suite, but on the second floor of the White
18 House in the vicinity of the White House counsel's
19 suite on the evening of the 20th.

20 A The only men's room on the second floor is
21 at that end of the corridor.

22 Q So if you were on the second floor, and

1 you did go to the men's room, it would be down in the
2 vicinity of the White House counsel's suite?

3 A Yes, it's closer than the stairwell.

4 Q Mr. Turk will make the same point, but do
5 you recall seeing anyone at all on the second floor
6 of the White House, the West Wing of the White House,
7 on the evening of the 20th?

8 A I do not have any clear recollection of
9 seeing anybody there.

10 Q Did you ever see Evelyn Lieberman on the
11 evening of the 20th or the early morning hours of the
12 21st at the White House?

13 A Not that I recall.

14 Q Is it your practice or personal style,
15 when you encounter uniformed Secret Service officers,
16 to exchange acknowledgements? Is that something you
17 typically do, never do?

18 A I try to say hello. One of the sources of
19 embarrassment was I worked there a year and never
20 learned the people's names. There was a dehumanizing
21 thing. That was one reason I gave for leaving. But
22 I tried to say hello to everybody.

1 Q I'll try not to dwell on this much longer.
2 But can you think of anything today that might
3 refresh your recollection about whether or not you
4 were on the second floor that evening?

5 A I can't really. Obviously, I sought to
6 try to think about this before this time, and I can't
7 come up with a specific encounter or event that
8 places me on the second floor.

9 I did say to my counsel, when you're
10 talking about the deposition, that I should volunteer
11 the fact that it would have been atypical for me not
12 to have gone to my office.

13 Q You don't recall it specifically, but you
14 assume, based upon your practices, that you probably
15 were on the second floor?

16 A That's correct.

17 Q Even with that assumption, you don't have
18 any specific recollections about any events that
19 transpired on the second floor?

20 A That is also correct; yes, sir.

21 Q While you were in the West Wing, really
22 within the White House complex on the evening of the

1 20th or the early morning hours of the 21st, other
2 than the conversations you've related about Mr.
3 Foster's trash, did you participate in or overhear
4 any conversations at all about the contents of Mr.
5 Foster's office?

6 A None that I can recall. I can't summon
7 them up.

8 Q Did you on the evening of the 20th or the
9 early morning hours of the 21st speak with the First
10 Lady?

11 A No.

12 Q Do you know whether anyone did?

13 A Not to my knowledge.

14 Q In the various conversations in which you
15 participated about notification, notification to the
16 press or non-notification to the Congress, did anyone
17 raise the issue of whether or not Mrs. Clinton had
18 been informed of Mr. Foster's death?

19 A Not that I recall. The way the
20 communications system works, it wouldn't have been a
21 question to ask, frankly.

22 Q It would be inconceivable that she had not

1 been informed?

2 A Yes.

3 Q Mr. Paster, what time did you leave the
4 White House complex that evening?

5 A I'm not sure.

6 Q Before or after midnight?

7 A I'm truly not certain. I wasn't there
8 very late, I know that. My possible utility never
9 developed. I tried to sort of imagine what it was,
10 and all I could say with confidence is I wasn't there
11 very long.

12 Q Do you recall anything at all of substance
13 -- and I don't mean to inquire of emotional
14 encounters or expressions of grief -- do you recall
15 anything at all of substance other than that that
16 occurred on the evening of the 20th or early morning
17 hours of the 21st at the White House that I have
18 neglected to ask you about, or that we haven't talked
19 about?

20 A No, sir.

21 Q I take it you went home, however long you
22 stayed at the White House; you went home?

1 A Directly home; yes, sir.

2 Q And did you return to the White House the
3 next morning, the morning of the 21st?

4 A Yes, absolutely.

5 Q In the course of your activities on that
6 day, did you have any involvement at all in the
7 events surrounding Mr. Foster's death; and by that I
8 mean the investigation into his death, or the
9 handling of the documents in Mr. Foster's office?

10 A No.

11 Q What about on the 22nd?

12 A No, sir.

13 Q At any time after the evening of the 20th
14 were you in any way involved in the events
15 surrounding Mr. Foster's death?

16 A No, sir.

17 Q Now, there have been press reports, Mr.
18 Paster, that a number of people may have physically
19 entered Mr. Foster's office on the evening of his
20 death. The press has reported, for example, that Mr.
21 Nussbaum was in there.

22 Do you have any information, other than

40

1 what you may have learned in the press, about that?
2 Exclude from your answer anything you may have
3 learned just from your attorneys.

4 MR. TURK: This is beyond what he may have
5 seen himself? This is any hearsay he may have heard
6 between that time and the present?

7 BY MR. JOHNSON:

8 Q I mean to exclude from the answer only the
9 press reports themselves, and what your counsel have
10 told you. But anything else from any other source
11 would be useful.

12 MR. TURK: This would exclude anything
13 that he's learned that would be attorney-client
14 privilege?

15 MR. JOHNSON: Well, I'm very comfortable
16 with that if you're the attorney and he's the client.
17 If it's some other attorney or client, I'd like to
18 explore the parameters of it a little bit.

19 MR. TURK: Okay, we can explore them. But
20 --

21 MR. JOHNSON: Can we resolve this off the
22 record more efficiently?

1 MR. TURK: Yes.

2 (Discussion off the record.)

3 BY MR. JOHNSON:

4 Q Mr. Paster, in an off-the-record
5 conversation, you and your counsel have been kind
6 enough to remind us -- to remind me, anyway -- that
7 you had been retained by counsel for Mrs. Williams in
8 connection with her appearance before the Senate
9 committee last year. And counsel has advised us, Mr.
10 Turk has advised us, that pending his discussions
11 with Ms. Williams' counsel, it would be inappropriate
12 under the terms of your retention agreement for you
13 to answer any questions about anything you may have
14 learned in the course of that representation of Ms.
15 Williams.

16 Pending that discussion, we'll certainly
17 honor that line, and not ask you to divulge what you
18 may have learned in that context. But other than
19 that context, and other than things you may have
20 learned from your own counsel, what if anything do
21 you know about Mr. Nussbaum's having entered Mr.
22 Foster's office on the evening of the 20th?

1 A In your original question, do you exclude
2 the press accounts?

3 Q I'm excluding that, yes.

4 A I have no knowledge if you exclude the
5 press accounts, my association with Maggie Williams,
6 and conversations I had with my counsel.

7 Q Let me ask you the same question about Ms.
8 Williams, with all the same exclusions.

9 A I have no independent knowledge.

10 Q What about Patsy Thomasson?

11 A Again, I have no independent knowledge
12 excluding the categories excepted.

13 Q I take it, Mr. Paster, you don't have any
14 knowledge other than what you may have read in the
15 press or learned from some privileged source about
16 the circumstances surrounding the review of the
17 contents of Mr. Foster's office on the 22nd of July,
18 1993?

19 A That's absolutely correct.

20 Q What, if anything, do you know about the
21 circumstances surrounding the discovery of Mr.
22 Foster's handwritten note on the 26th of July?

1 A I have no knowledge except that which I
2 read.

3 Q Have you ever had an occasion to talk to
4 the President personally about the investigation into
5 Mr. Foster's death or the handling of Mr. Foster's
6 documents?

7 A No.

8 Q Have you talked with the First Lady on
9 that same topic?

10 A No.

11 Q Have you talked with the President or the
12 First Lady or anyone else in the White House about
13 the press reports that you've read?

14 A Anybody else in the White House?

15 Q Anybody else who worked for the White
16 House, yes.

17 A That question would cover staff gossip
18 about what we read in the paper.

19 Q Exclude staff gossip.

20 A Then the answer is no.

21 Q As you sit here today, other than things
22 you may have learned through your counsel or in the

1 process of assisting in the representation of Ms.
2 Williams, I take it you just don't have any knowledge
3 at all about any of those topics other than what was
4 in the paper?

5 A That's correct.

6 Q Mr. Paster, let me just ask you.

7 I think I've concluded the questions that
8 I can think to ask -- some of them twice. But let me
9 invite you to offer to the committee anything that
10 you'd like to offer. Perhaps there's something
11 that's in your mind that's relevant that I have
12 neglected to raise or to ask. We would certainly
13 welcome your knowledge relevant to any topic.

14 A To be very candid, you've elicited the
15 things that I thought that I knew that were relevant
16 to the committee's work.

17 MR. JOHNSON: Thank you very much for your
18 time and your patience.

19 Mr. Cole may have some questions, and at
20 the end of those questions, I'll say one brief word
21 about confidentiality. But thank you.

22 EXAMINATION

1 BY MR. COLE:

2 Q Very briefly, Mr. Paster, my name is Lance
3 Cole. I'm one of the counsel to the Democratic
4 members of the committee.

5 If I could return your attention to the
6 evening of July 20, I believe you testified that your
7 recollection is that you arrived back at the White
8 House perhaps at 10 p.m. Is that correct?

9 A I wasn't precise. But I'd speculate it
10 was probably after that.

11 Q I believe you testified that you were not
12 at the White House very long. Is that correct?

13 A Yes, sir.

14 Q You recall a discussion in Mr. Gearan's
15 office during that period involving a public
16 announcement of Mr. Foster's death. Is that correct?

17 A Yes, sir.

18 Q Do you recall during the time you were at
19 the White House that night, before you left to return
20 home the second time, a public announcement was made
21 concerning Mr. Foster's death?

22 A I believe it was made after I left. I've

46

1 thought about that and I'm not certain, but I believe
2 it was made after I left.

3 Q So, to the best of your recollection, the
4 public announcement would have been made after you
5 left that evening?

6 A I believe that's correct.

7 Q And so, is my understanding correct that
8 then, during the time you were at the White House the
9 second time that evening, the circumstances of Mr.
10 Foster's death, the fact of his death, was being
11 treated, if not confidentially, at least as not
12 public information?

13 A Correct.

14 Q Do you have a view as to whether under
15 those circumstances, if a uniformed Secret Service
16 officer would have asked you a question, such as
17 "What's going on?" -- for want of a better way to
18 phrase it -- would you have been likely to have told
19 that officer about Mr. Foster's suicide?

20 A That's interesting.

21 Q If you have a view. I realize it's a long
22 and hypothetical question, but it's not entirely

1 hypothetical, in view of some testimony we've been
2 given by other witnesses.

3 A I plain don't know.

4 Q That's a fair answer. But I wanted to ask
5 the question in any event.

6 A Yes.

7 Q But I suppose it is fair for me, that I am
8 correct in my understanding that you don't have any
9 recollection of having imparted any of that
10 information to a uniformed Secret Service officer?

11 A I don't recall telling that to anybody. I
12 may have, but I surely can't say with precision that
13 I did, either.

14 MR. COLE: Thank you very much. I really
15 don't have anything beyond that.

16 MR. JOHNSON: Thank you, Mr. Paster.
17 We're finished. We'd be grateful if you wouldn't
18 discuss your deposition testimony here today with
19 anyone.

20 THE WITNESS: Absolutely.

21 MR. JOHNSON: Thank you, sir.

22 (Whereupon, at 5:15 p.m., the taking of

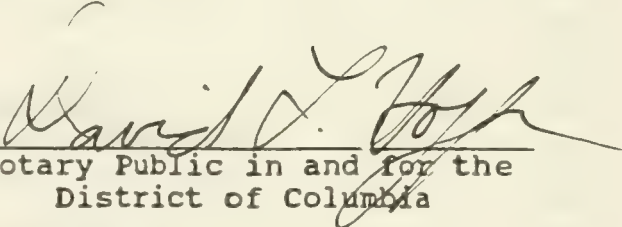
1 the instant deposition ceased.)
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HOWARD G. PASTER

CERTIFICATE OF NOTARY PUBLIC & REPORTER

49

I, David L. Hoffman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires 6/30/00

**DEPOSITION OF JAMES SHEA, JR.
IN RE: S. RES. 120**

WEDNESDAY, JULY 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JAMES SHEA, JR., called for examination pursuant to notice of deposition, at 10:30 a.m. in Room SC-10 of the Capitol, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
LANCE COLE, Esq.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

TIMOTHY M. FOLEY, Esq.
U.S. Secret Service
Office of Chief Counsel
1800 G Street, NW
Room 842
Washington, DC 20223
On behalf of the Deponent.

CONTENTS

WITNESS**EXAMINATION****James Shea, Jr.**

by Mr. Johnson 3

by Mr. Cole 25

1 PROCEEDINGS

2 Whereupon,

3 JAMES SHEA, JR.

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q Good morning, Mr. Shea. Thank you for
9 coming down this morning. Let me introduce myself.
10 My name is Everett Johnson, and I'm one of the
11 attorneys for the Republican members of the special
12 Senate committee investigating Whitewater and related
13 matters.14 What brings us here this morning is Senate
15 Resolution Number 120, which creates the committee
16 and authorizes the investigation into the matters
17 related to Whitewater Development Corporation.
18 Specifically, we're looking at the handling of the
19 documents in Mr. Foster -- Mr. Vincent Foster's
20 office at or about the time of his death on July 20,
21 1993. So the questions that I ask you today will --
22 today will relate, I hope, to that topic.

4

1 A All right, sir.

2 Q Have you been deposed, Mr. Shea, before? I
3 don't mean in connection with this, but just ever.

4 A A court case one time.

5 Q Let me just take one minute on a couple of
6 procedural things that will help us out. Since a
7 verbatim transcription is being made of the questions
8 that we ask you and the answers that you give, it's
9 important that we not speak simultaneously.

10 A Okay.

11 Q Similarly, it's important that you respond
12 to questions verbally and not with gestures or other
13 forms of nonverbal communication since she can't
14 record those. If you would like to consult with your
15 counsel or take a break at any time, feel free to do
16 that, and if a question that I've asked is confusing
17 or nonsensical in some way, I'll trust you to tell me
18 that you don't understand it.

19 A Okay.

20 Q Have you had an opportunity to meet with
21 your attorneys prior to giving deposition testimony
22 here today?

1 A My attorney, Mr. Foley.

2 Q Mr. Foley.

3 A This morning.

4 Q No one else was present during that
5 meeting, I take it?

6 A Yes.

7 Q I asked the question badly. The answer is
8 confusing. Was anyone else present during that
9 meeting?

10 A No.

11 Q And you haven't been contacted by any
12 representatives of the White House in connection with
13 your deposition; is that correct?

14 A No.

15 Q Mr. Shea, you are a member of the uniformed
16 division of the Secret Service. Am I correct about
17 that?

18 A Yes.

19 Q How long have you been employed by the
20 Secret Service?

21 A Approximately 23 years.

22 Q And are you presently stationed in the

1 White House complex?

2 A Yes, I am. I work in the east wing of the
3 White House at this time.

4 Q In July 1993, which is the month of
5 Mr. Foster's death, where were you stationed in the
6 White House?

7 A I was at the west wing.

8 Q A particular duty station, or did you move
9 around?

10 A The basement would be basically the west
11 side of the west wing, downstairs.

12 Q And what shift did you normally work?

13 A Midnights.

14 Q Can you tell me when that shift begins and
15 when it ends?

16 A At 2230 hours, from 2230 hours to 7:00 in
17 the morning.

18 Q 2230 is 10:30 in the evening; is that
19 correct?

20 A Yes, approximately. We go to roll call
21 first, which takes approximately 20 minutes or so.

22 Q So when do you actually assume your

1 station, ordinarily?

2 A Approximately 10 till 11:00.

3 Q A few minutes before 11:00?

4 A Yes.

5 Q And were you working the midnight shift on
6 the evening of July 20, 1993?

7 A Yes, I was.

8 Q And so is it your best recollection that
9 you would have assumed the west wing basement duty
10 station a few minutes before 11:00 on that evening?

11 A I believe so, yes.

12 Q Let me give you some names of people who
13 worked in or around the White House at that time,
14 Mr. Shea. The question will be whether or not you
15 would have recognized those people on July 20, 1993.

16 A Okay.

17 Q Obviously you would recognize the President
18 and First Lady.

19 A Of course.

20 Q Mr. Nussbaum?

21 A Yes. I would recognize him that night.

22 Q Maggie Williams?

1 A I didn't know her name at the time.

2 However, I remembered her face from when I was
3 questioned by the FBI.

4 Q I'll later ask you whether or not you saw
5 any or all of these people on that evening, but I
6 just want to be clear about what you understood on
7 that evening. You would not have known
8 Ms. Williams's name on that evening; is that correct?

9 A I did not.

10 Q Ms. Williams is a young African-American
11 woman.

12 A Yes, I know.

13 Q And you are able to say today whether or
14 not you saw her on that evening; is that correct?

15 A I believe that I saw her that evening, yes,
16 sir.

17 Q I'll come back and ask you about that. I
18 just want to establish some identity. Patsy
19 Thomasson, would you have recognized Ms. Thomasson?

20 A I didn't know her name as well. However,
21 you know, I've seen her numerous times since, and I
22 vaguely remember her being there that night as well.

1 Q Would you have recognized David Watkins?

2 A No, sir, I didn't.

3 Q Would you have recognized -- now, bear in
4 mind I'm not asking you at this point whether or not
5 you saw them on that evening. It's just if they had
6 been there, would you have recognized them is really
7 the question. Would you have known their face?

8 A Well, at the time the administration was
9 there for six months. Working midnights, we don't
10 get to see the staff as much as it would be nice to.
11 So it was basically difficult, when asked almost a
12 year past, whether or not I remember them. Basically
13 those three are the ones I remember to some degree.

14 Q Mr. Nussbaum, Ms. Williams and
15 Ms. Thomasson?

16 A To some degree, yes. With Mr. Nussbaum, I
17 can't quite remember if it was that particular night
18 or the following night that I saw him.

19 Q Thank you. That's very helpful. As we
20 proceed, let me just ask you the names of some other
21 people and whether or not you -- not yet whether you
22 saw them on that evening, but whether or not as of

10

1 July 20, 1993 you knew who they were or would have
2 recognized them. Evelyn Lieberman?

3 A No.

4 Q Mr. McLarty?

5 A I would know him today. I'm trying to
6 think now if I would have remembered him or known him
7 then. I would have known him then, yes.

8 Q Mr. Gearan?

9 A I wouldn't have known him then, but I do
10 know him today.

11 Q Howard Pastor?

12 A No.

13 Q Do you know also a uniformed division
14 officer by the name of O'Neill?

15 A Yes, Henry O'Neill.

16 Q Do you know Mr. --

17 A I know him as Hank.

18 Q Do you know Mr. O'Neill well?

19 A Well, I've worked with Officer O'Neill for
20 as long as I've been at the White House, so that's
21 almost 13 years.

22 Q Do you work, typically, the same shift?

1 A I'm trying to think now. The first couple
2 of years I don't think I did work with him. In fact,
3 I know I didn't. I don't know exactly when it was he
4 came to midnights. I've been on midnights from --
5 for approximately 22 years.

6 MR. JOHNSON: Off the record.

7 (Discussion off the record.)

8 BY MR. JOHNSON:

9 Q I'd like to focus now, Mr. Shea, on the
10 evening of July 20, 1993. For purposes of my
11 questions, when I refer to the evening of July 20, I
12 would like you also to include the early morning
13 hours of July 21. In other words, I don't mean to
14 cut off any information precisely at midnight on July
15 20; we'll also be inquiring about things that may
16 have happened after midnight in the early morning
17 hours of the 21st.

18 A Okay.

19 Q I think you've said that you, to the best
20 of your recollection, assumed your duty station in
21 the west wing basement a few minutes before 11:00 on
22 that evening; is that correct?

12

1 A I believe that's the case, yes.

2 Q When you assumed that duty station, were
3 you aware that Mr. Foster's body had been found?

4 A Yes, they mentioned something at roll call
5 about it.

6 Q Did you, when you assumed your duty station
7 on that evening, notice any unusually high degree of
8 activity in the west wing?

9 A Not really, no.

10 Q On that evening, did you see Bernard
11 Nussbaum?

12 A My recollection is it was either that night
13 or the following night that I actually saw him, and
14 what it was, at the time that I saw him, as I picture
15 it, is that he was walking with his entourage and
16 leaving the west wing.

17 Q At approximately what time?

18 A I don't remember what time it was.

19 Q Is that the only time you saw him --whether
20 it was on the evening of the 20th or the evening of
21 the 21st, is that the only time you recall seeing
22 Mr. Nussbaum?

1 A Well, see, I'm not too -- no, I think there
2 were other occasions, you know, after that. You
3 know, it's tough to try to remember that particular
4 night, but I --

5 Q On that night -- I'm sorry, did I interrupt
6 you?

7 A No, I just -- it's just -- I don't know how
8 many times, I think, that I -- if you need a number
9 on that, it's probably been occasionally.

10 Q And I would really like to just focus on
11 the evening, late evening hours or early morning
12 hours on the 20th and 21st of July.

13 A Okay.

14 Q And I know it's hazy in your memory whether
15 it was the evening of the 20th or the morning of the
16 21st, but you said you saw Mr. Nussbaum leaving with
17 his entourage; is that correct?

18 A Yes, just for some reason I remember him
19 leaving with a whole group of people, yes.

20 Q Did you recognize any of the other
21 individuals with him?

22 A Offhand, I can't quite remember who else

1 was with him at the time.

2 Q When you say a whole group of people, how
3 many, approximately?

4 A Maybe six or seven.

5 Q Men, women, both?

6 A Both.

7 Q And you didn't recognize any of the other
8 individuals?

9 A Not really, no. I can't recollect at this
10 point.

11 Q Did you see -- do you have any more vivid
12 recollection? Was anybody carrying anything, or does
13 anything else strike you?

14 A You know, often we see people leaving with
15 briefcases and such. He may or may not have had a
16 briefcase. I'm not sure.

17 Q Wouldn't have meant anything to you?

18 A No, it wouldn't have meant anything to me.

19 Q Did you see Maggie Williams on the late
20 evening of the 20th or early morning hours of the
21 21st?

22 A When I first got on post, I believe she was

1 sitting -- or maybe she was upstairs and came
2 downstairs; I'm not sure, but she was sitting on the
3 couch, which we have a couch right from where the
4 post is. She looked somewhat distraught. I kind of
5 picture her just being upset to some degree.

6 Q Was she crying?

7 A I believe -- yeah, I believe she was. I
8 tried to not be obvious, you know, tried to be
9 sensitive to her.

10 Q Did you speak with her?

11 A I'm somewhat gregarious, and I probably
12 said how are you tonight or something, you know.
13 Other than that, I didn't go into any questioning or
14 anything, no.

15 Q Was she alone, or was she with someone
16 else?

17 A Well, there was another -- she was sitting
18 there alone. And I believe she got up, and I think
19 she went upstairs to the second floor at a certain
20 point.

21 Q Why do you think that?

22 A I just -- because I remember she got off

1 the couch. Now, she might have gone -- there was a
2 room -- I don't know the name of the room now, but
3 it's right across from the photo office, and that
4 room was open. It's usually -- when we come on
5 midnights, it's usually secured. I know there was a
6 young lady -- and I can't picture who it was at this
7 time, though, but I know somebody was in and out of
8 that office.

9 Q So it's possible that she went upstairs or
10 into that office which you observed as being open?

11 A Yeah. Again, it's vague. It's so vague to
12 me. I'm sorry.

13 Q Sure, sure. Now, you may have said this,
14 and if you did, I apologize. Did you say that when
15 you came on duty that evening, Ms. Williams was
16 already sitting on the couch in the basement?

17 A Well, you know, again, that part is vague,
18 too. She may or may not have been there when I got
19 there on post.

20 Q Did you see Ms. Williams at any other time
21 on that evening?

22 A I don't remember.

1 Q Did you see Ms. Thomasson at any point on
2 that evening?

3 A I believe I did, but I don't remember where
4 it was. I did see her, though. I think it was
5 downstairs, of course, on that post. That was the
6 only place I saw any of the staff. But maybe it
7 was -- maybe she came up to Maggie Williams or
8 something. I'm not sure.

9 Q It sounds as if it's pretty hazy in your
10 memory what happened, then.

11 A Yes, it is.

12 Q As it should be. It's two years ago.

13 Did you at any time yourself go up to the
14 second floor of the west wing on the evening of the
15 20th or early morning hours of the 21st?

16 A No, I didn't. I don't believe I did, no.

17 Q Did anyone ever ask you to go up and unlock
18 any offices on the west wing, whether or not you
19 went? Did you have any conversations with anybody
20 about going up to unlock offices?

21 A Not that I remember, no.

22 Q As you sit here today, do you know who

1 Evelyn Lieberman is?

2 A You know, I probably should. I haven't
3 been over in the west wing in a while. I probably
4 should know; however, I don't know exactly who it is.

5 Q So I'll ask a question that will seem silly
6 in light of that, but I should ask it anyway. Did
7 you see Ms. Lieberman at any time on the evening of
8 the 20th or early morning hours of the 21st? Who
9 knows; right?

10 A Yes.

11 Q You wouldn't have recognized her?

12 A No.

13 Q Other than Mr. Nussbaum, perhaps
14 Ms. Williams and Ms. Thomasson, did you see anybody
15 else on the evening of the 20th or early morning
16 hours of the 21st who you recognized?

17 A I don't remember.

18 Q Do you know Craig Livingstone?

19 A Who?

20 Q Mr. Livingstone, Craig Livingstone.

21 A I can't -- I don't remember who it is.

22 Q His title, and I may get this a little bit

1 wrong, but it's something like director of White
2 House security, which has been modified recently to
3 director of White House personnel security.

4 A I know the name because of, you know, that
5 he does take care of the security, but I don't know
6 what he looks like. I've never met him.

7 Q So, therefore, you wouldn't have any idea
8 whether or not you saw him on the 20th or 21st?

9 A No.

10 Q Do you remember there being any time on
11 that evening when any individual spoke to you about
12 access to any office in the west wing of the White
13 House?

14 A I'm sorry?

15 Q Did anyone ever come up to you on that
16 evening, even though you may not have known who they
17 were, and ask you about gaining access to any part of
18 the west wing?

19 A If they did, I don't remember.

20 Q Do you have keys to the offices up on the
21 second floor?

22 A Yes.

1 Q So if they had, it would have at least been
2 possible for you to let them in, if they had asked?

3 A It would have been, yes.

4 Q But to the best of your recollection, it
5 didn't happen?

6 A Yes.

7 Q Did you -- now, you know Mr. O'Neill pretty
8 well?

9 A Yes.

10 Q Did you discuss with Mr. O'Neill on the
11 20th or the 21st anything that he may have observed
12 on that evening?

13 A I don't remember any conversation that I
14 would have had with him.

15 Q Have you ever discussed -- as we sit here
16 today, have you ever discussed with Mr. O'Neill
17 anything that he may have observed on the evening of
18 the 20th or early morning hours of the 21st?

19 A He -- okay. After the FBI, he mentioned
20 what it was he observed, whatever, and I stated that,
21 you know, I didn't -- I don't remember anything being
22 taken out or whatever, myself.

1 Q What do you recall that Mr. O'Neill told
2 you that he observed?

3 A That he saw one of the staff members take
4 out something from the office, some papers, whatever.

5 Q Did he -- now, you say you and he discussed
6 that after the FBI.

7 A Right.

8 Q Can you place that in time for me, how many
9 days, weeks or months after the evening of July 20
10 that you had that conversation with Mr. O'Neill?

11 A It would have been -- oh, I don't know when
12 they -- I'm trying to think of the date when we had
13 the -- it doesn't seem like it was that long ago.

14 I'm not sure of the date on that. It was after one
15 of the -- I think it was after I had to go to report
16 to the -- to talk to them, and I think it was
17 sometime after I came back that he mentioned it.

18 Q Do you remember when you went to report, to
19 talk to them?

20 A I don't know the date on it, no. I've
21 forgotten the date.

22 Q Do you have any --

1 A I guess the last couple of months.

2 Q Sometime in the last couple of months?

3 A Yeah.

4 Q Sometime in 1995, therefore?

5 A Yes, yes.

6 Q And the only time you've ever discussed
7 with Mr. O'Neill his observations on that evening is
8 sometime after that --

9 A Yes.

10 Q -- FBI interview; is that correct?

11 A That's what I remember, yeah.

12 Q After the evening of the 20th -- I take it
13 you didn't see Ms. Williams leave the White House on
14 that evening?

15 A You know, again, it would be too vague for
16 me to remember if I saw her in particular.

17 Q You don't have any memory today of seeing
18 her leave the White House?

19 A No, I don't. She might have -- she
20 probably left -- well, see I'm -- no, I shouldn't say
21 probably, but she probably left with the entourage
22 when they all left together, I guess.

1 Q If your memory is correct that Mr. -- that
2 you observed Mr. Nussbaum on the evening of the 20th
3 or early morning hours of the 21st, Ms. Williams may
4 have been part of that group?

5 A She might have been. I'm not sure.

6 Q Mr. Shea, do you remember anything else
7 about the evening of the 20th or early morning hours
8 of the 21st that I haven't asked you about that comes
9 to mind?

10 A No, sir.

11 Q So far as you know, in your relationship
12 with Mr. O'Neill, is he disgruntled in any way or
13 unhappy with the Clinton Administration in any way
14 that he's expressed to you?

15 A No, sir.

16 Q Can you think of any reason why Mr. O'Neill
17 might want to hurt or injure anyone who works in the
18 White House today?

19 A No, sir.

20 Q So far as you know, does he harbor any
21 racial biases or anything of that kind that he's ever
22 expressed to you?

1 A No, sir.

2 Q Based on everything you know, can you think
3 of any reason why he might not be telling the truth
4 about what he observed on the evening of the 20th or
5 the 21st?

6 A No.

7 Q Mr. Shea, as we sit here today, do you have
8 any information at all relating to the documents in
9 Mr. Foster's office or the -- any allegations of
10 removal of documents from Mr. Foster's office that
11 you can share with us?

12 A No, sir, I don't remember it. I didn't see
13 anything, and I don't remember anything being brought
14 out or whatever.

15 MR. JOHNSON: I thank you for your time. I
16 don't have any further questions. Mr. Cole may have
17 some questions. If he does, I'll say a word about
18 confidentiality at the end.

19 MR. COLE: One second, please.

20 (Pause.)

21 MR. FOLEY: Off the record.

22 (Discussion off the record.)

1 EXAMINATION

2 BY MR. COLE:

3 Q Mr. Shea, as Mr. Johnson indicated earlier,
4 my name -- or I think he indicated earlier, my name
5 is Lance Cole. I'm one of the attorneys for the
6 Democratic members of the special committee, and I
7 would like to ask you some questions about the
8 information you've provided to Mr. Johnson.

9 In asking my questions, I'll need to
10 restate or tell you my understanding of what you
11 previously testified here today. If I am not correct
12 in what I state, please tell me so that we can
13 correct the record and have an accurate record here.

14 A Okay.

15 Q I believe that you testified that when you
16 assumed your post on the evening of July 20, you
17 recall that Ms. Williams was sitting on a couch,
18 perhaps crying, near your post; is that correct?

19 A Yes.

20 Q And then you recalled at a later point that
21 she got up and either went upstairs to the second
22 floor or into another office?

26

1 A Yes.

2 Q And you said the second floor. As I
3 understand it, your post is in the basement; is that
4 correct?

5 A Yes.

6 Q So do you have a reason -- as I understand
7 it, there is both a first floor and a second floor
8 above the basement in the west wing; is that correct?

9 A Yes.

10 Q So do you have a reason to believe that
11 when Mrs. Williams got up and went upstairs, that she
12 was going to the second floor as opposed to the first
13 floor?

14 A We have an elevator where it shows where a
15 person has gotten off.

16 Q So your recollection is that she got on the
17 elevator and you saw the light for the second floor?

18 A I believe that I did, yes, sir.

19 Q I guess I'm confused, and perhaps you can
20 help me out here because you told me you thought she
21 might also have gone into another room that was on
22 that floor?

1 A Well, yeah. And I don't know if at a
2 certain time she went to the back room first and then
3 went upstairs. I'm not sure either way.

4 Q And I didn't understand exactly where the
5 room that you were describing is. Is it on the
6 basement level as well?

7 A Yeah, it's -- well, it would be right
8 across from the photo office.

9 Q On the basement level?

10 A On the basement level, yes.

11 Q So if she had gone to that room, she would
12 not have used the elevator; is that correct?

13 A Correct. And I think -- well, it was
14 either right away or maybe at another point that she
15 went upstairs using the elevator.

16 Q I realize this is very difficult to recall
17 two years after the fact, and I'm just trying to get
18 my best understanding of what you do recall.

19 A Okay.

20 Q So would it be correct for me to say that
21 you believe that she either went up to the second
22 floor on the elevator or went to the room across from

1 the photo office or did both, and you're not sure
2 which? Or do you believe she did both? I'm sorry; I
3 apologize for the lengthy question.

4 A I'm not sure. I'm not sure. I'm not sure
5 if it was both. I'm sorry.

6 Q Thank you. You also testified -- or
7 Mr. Johnson asked you whether you recalled anyone
8 asking you to help them gain access to an office or
9 unlock an office that evening.

10 A Yes.

11 Q And you testified that you did not recall
12 that; is that correct?

13 A Yes.

14 Q Do you recall anyone asking you to lock an
15 office that evening?

16 A No, I don't.

17 Q Do you recall anyone asking you to have
18 someone else lock an office or to confirm that an
19 office had been locked?

20 A That's vague, but it's possible that
21 somebody asked me to have it locked. It's possible.

22 Q Do you have any recollection as you sit

1 here today who that might have been?

2 A I'm sorry, I don't. I don't remember.

3 Q That's fine. We appreciate your efforts to
4 remember.

5 Turning to the time when you had the
6 discussion with Mr. O'Neill about what he observed
7 that night, I believe that you told Mr. Johnson that
8 Mr. O'Neill told you that he saw one of the staff
9 members take something, perhaps some papers, and you
10 said from an office or from the office. My question
11 for you is do you recall which office?

12 A Say again?

13 Q I believe that you testified that
14 Mr. O'Neill told you that he had seen someone on the
15 evening of July 20, a staff member, take something,
16 and you said papers, from an office.

17 A Yes.

18 Q Is that correct?

19 A Okay. And the question is whether --

20 Q The question is did he say which office?
21 Did he tell you which office?

22 A Okay. Well, he would have told me the

1 counsel's office, I guess. I think that's what he
2 was referring to.

3 Q And by "counsel's office," do you mean the
4 suite of offices that would include the reception
5 area --

6 A Mr. Foster's office.

7 Q Did he tell you that someone had taken
8 something from Mr. Foster's office?

9 A Oh, jeez. I don't remember exactly how it
10 was said.

11 Q Do you remember whether he said anything
12 that would lead you to believe it was the counsel's
13 office as opposed to some other office in the west
14 wing?

15 A I'm sorry?

16 Q Is the best recollection you have that he
17 said "an office" or "the office"?

18 A I believe he probably said an office, or
19 Foster's office. He might have said Foster's office.

20 Q But sitting here today you really can't
21 recall?

22 A No.

1 MR. COLE: Let's take a break for a
2 moment.

3 (Pause.)

4 BY MR. COLE:

5 Q Your post is in the basement level of the
6 west wing?

7 A Yes.

8 Q If one were to go from the second floor of
9 the west wing, where the White House counsel's office
10 is located, to the residence area of the White
11 House --

12 A To the residence, okay.

13 Q Yes. Is it necessary to pass by your post,
14 or can you go to the residence without passing by
15 your post?

16 A One could go from the residence from
17 outside, but if you're saying from the west wing,
18 you'd have to go past my post.

19 Is that what he's asking? I must be
20 tired.

21 (Witness conferred with counsel.)

22 BY MR. COLE:

1 Q My question was is it possible to go from
2 the second floor of the west wing to the residence
3 without going past your post.

4 A Yes, yes.

5 Q So it is possible to go from the second
6 floor without passing your post?

7 A Well, in the west wing; right?

8 Q Yes, the second floor of the west wing,
9 specifically where the counsel's office is located.

10 A Well, okay. At that time of night
11 everything is locked up, with the exception of --

12 (Witness conferred with counsel.)

13 MR. COLE: Off the record for a moment.

14 (Discussion off the record.)

15 BY MR. COLE:

16 Q Mr. Shea, the question was at the time of
17 night when you are --

18 A Can I say something off the record for a
19 second?

20 MR. COLE: Yes.

21 (Discussion off the record.)

22 BY MR. COLE:

1 Q Mr. Shea, I believe the question pending
2 was whether it is possible during your shift to go
3 from the second floor of the west wing complex to the
4 residence portion of the White House without passing
5 your guard station in the basement.

6 A Ordinarily it would be that you would have
7 to pass my post to go towards West Exec.

8 Q So ordinarily, if someone wanted to go from
9 the second floor either to the residence or to West
10 Executive Avenue to exit the west wing, they would
11 pass your guard post; is that correct?

12 A Yes.

13 Q What would the exception to that be during
14 your shift? How would it be possible for one to
15 leave without going past your guard station? Are
16 there times when other doors are unlocked so that one
17 could do that?

18 A If the press --

19 (Witness conferred with counsel.)

20 THE WITNESS: If there was activities going
21 on at the time, then they would have one of the posts
22 open where they could leave towards the residence.

1 BY MR. COLE:

2 Q That would be a post on the first floor of
3 the west wing complex?

4 A They could go from -- yes, from the first
5 floor.

6 Q Do you recall on the night of July 20, 1993
7 whether the first floor doors were accessible in that
8 manner?

9 A No, I don't.

10 Q Do you recall anyone carrying anything past
11 your station in the basement on the evening of July
12 20?

13 A No, I don't.

14 Q Do you recall Maggie Williams carrying
15 anything past your station at any time the evening of
16 the 20th, early morning hours of the 21st?

17 A Specifically, no.

18 MR. COLE: Thank you. I don't have any
19 further questions.

20 MR. JOHNSON: Mr. Shea, thank you very
21 much. The confidentiality of this is important to
22 all of us, and we'd be grateful if you didn't discuss

1 your deposition here with anyone.

2 THE WITNESS: Okay.

3 MR. JOHNSON: Thank you very much.

4 (Whereupon, at 11:13 a.m., the deposition
5 was concluded.)

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JAMES SHEA, JR.

CERTIFICATE OF NOTARY PUBLIC & REPORTER

36

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

**DEPOSITION OF LINDA R. TRIPP
IN RE: S. RES. 120**

VOLUME II

WEDNESDAY, JULY 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of LINDA R. TRIPP, called for further examination pursuant to agreement by counsel, at 2:07 p.m. in Room 538 of the Dirksen Senate Office Building, before GARRETT J. WALSH, JR., Court Reporter, and EDWIN G. CROWLEY, a Notary Public within and for the District of Columbia, when were present:

APPEARANCES

ROBERT J. GIUFFRA, JR., Esq.

Majority Chief Counsel

LANCE COLE, Esq.

Minority Deputy Special Counsel

U.S. Senate

Committee on Banking, Housing, and Urban Affairs

534 Dirksen Building

Washington, DC 20510

On behalf of the Committee.

KIRBY D. BEHRE, Esq.

Paul, Hastings, Janofsky & Walker

1299 Pennsylvania Avenue, NW

Tenth Floor

Washington, DC 20004-2400

On behalf of the Deponent.

ALSO PRESENT: ALICE S. FISHER

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Linda R. Tripp [Resumed] | |
| by Mr. Giuffra | 63 |
| by Mr. Cole | 101 |
| by Mr. Giuffra | 102 |
| by Mr. Cole | 106 |
| by Mr. Giuffra | 107 |
| by Mr. Cole | 129 |

1 PROCEEDINGS

2 (2:07 p.m.)

3 Whereupon,

4 LINDA R. TRIPP

5 was recalled as the deponent and, having previously
6 been duly sworn, was examined and testified further
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. GIUFFRA: (Continuing)

10 Q Good afternoon, Ms. Tripp. And, I really
11 want to thank you again for coming back.

12 And, I want to apologize for starting the
13 deposition somewhat later than we had planned. And,
14 we want to again thank you for your cooperation.

15 Okay. Directing your attention to July
16 20, 1993, which was the date that Mr. Foster died,
17 how did you learn of Mr. Foster's death?

18 A July 20th was the date he left the office
19 and --

20 Q Yes.

21 A Okay. I received a telephone call at my
22 residence close to midnight.

64

1 Q And, who contacted you?

2 A Deborah Coyle.

3 Q And, who is Deborah Coyle?

4 A Her title was Personal Secretary to the
5 President.

6 Q And, what did Ms. Coyle say?

7 A She called to notify me of what had
8 happened so that I did not hear it on the radio
9 coming into work in the morning.

10 Q Ms. Tripp, if someone wanted to call the
11 President, would they call through Deborah Coyle?

12 A No.

13 Q If someone was -- if the President wanted
14 to speak to someone, would the page be from Deborah
15 Coyle?

16 MR. BEHRE: Let me just caution the
17 witness, if you know the answer to this.

18 THE DEPONENT: I do know the answer to
19 this question. No.

20 BY MR. GIUFFRA: (Continuing)

21 Q If the -- how would -- what would be the
22 procedure?

1 A The procedure would be to go through the
2 White House switch. And, the person to be contacted
3 would either be Nancy Hernreich, Betty Currie, his
4 Executive Secretary, who sat outside the Oval Office,
5 and to a lesser extent, his aide, Andrew Friendly.

6 And, this was prior to George
7 Stephanopolous' move closer in.

8 Q Okay. Did Ms. Coyle ask you to come to
9 the White House on the night of July 20?

10 A She did not.

11 Q Okay. The next morning, which is July
12 21st, which was a Wednesday, approximately what time
13 did you arrive at the White House?

14 A I'm unclear as to the time. I didn't
15 sleep that night.

16 My intention was to go in earlier. I
17 think it was between either 7:30 to 8:30, in that
18 time frame.

19 Q And, what happened when you first arrived
20 in the office?

21 Was anyone present?

22 A Betsy Pond was at her desk.

1 Q Was the door to Mr. Foster's office opened
2 or closed?

3 A I believe it was open.

4 Q Was anyone in Mr. Foster's office?

5 A No.

6 Q Was anyone else present in the Counsel's
7 suite?

8 A No.

9 Q What did you discuss with Betsy Pond, if
10 anything?

11 A Do you mean, what were the first words?

12 Q When you walked in?

13 A I didn't need to use my key. The door was
14 unlocked into the suite.

15 Betsy was at her desk on the phone and was
16 either in the process of hanging up or finishing the
17 conversation and interrupted herself and yelled,
18 "Don't go in there. Don't go in there." And, I
19 said, "Of course."

20 Q Meaning Mr. Foster's office?

21 A Yes. And, I said, "Of course, I'm not
22 going in there. No one can go in there. It should

1 be secured," something to that effect.

2 She said, "Well, I went in there but just
3 to straighten papers." And, I said, "Betsy, why
4 would you have gone in there to straighten papers?
5 We never go into Vince's office to straighten
6 anything."

7 She then admitted that she was hysterical,
8 and she was very, very overwrought, and that she had
9 actually been in there looking for a note but that no
10 one was to go in there; and, those were Bernie's
11 strict instructions.

12 Q And, when did she -- when was she advised
13 by Mr. Nussbaum that no one should enter the office?

14 A I don't know when she was advised, but I
15 know she already knew that as I was entering the
16 office.

17 Q And, she indicated to you that she had
18 violated Mr. Nussbaum's instructions by going into
19 the office?

20 A No. I believe her instructions came after
21 she had been in the office.

22 Q Did she indicate to you that she spoke to

1 Mr. Neuwirth?

2 A She did not.

3 Q Did she indicate to you what she had done
4 when she entered Mr. Foster's office?

5 A Yes.

6 Q Okay. What did she say she had done?

7 A She said she had looked for a suicide
8 note.

9 Q Did she say where she looked for a suicide
10 note?

11 A On his desk.

12 Q Did she say whether she had opened any
13 drawers in Mr. Foster's office?

14 A She didn't say.

15 Q Did she indicate -- with regard to
16 straightening papers, did she indicate whether she
17 had straightened papers on the desk or on the coffee
18 table?

19 A She didn't say she had straightened. She
20 said she was going to say she straightened.

21 Q I see. So, this was just a way to -- the
22 statement that she was going into the office to

1 straighten papers was a way to just explain why she
2 was in the office?

3 A Yes.

4 Q Why did she have some concern that people
5 would find out she was in the office?

6 MR. BEHRE: I will caution the witness, if
7 she knows why someone else would think something.

8 BY MR. GIUFFRA: (Continuing)

9 Q Did she indicate to you why she was afraid
10 that someone would think she was in the office?

11 A She said because Bernie said, "No one is
12 to go in the office. It is not to be entered." So,
13 I'm sure in -- my opinion, from what she was saying
14 to me, based on what Bernie said to her, was that she
15 realized she should not have been in Vince's office.

16 Q And, she indicated to you that she had
17 spoken to Mr. Nussbaum after she had entered the
18 office, meaning Mr. Foster's office?

19 A Yeah, that was the impression I had. The
20 alarm was in there as well, I should say.

21 Normally, coming in, we would have to
22 disarm the system. And, that switch was in Vince's

70

1 office.

2 Q And, had she gone into Mr. Foster's office
3 to disarm the switch?

4 A I don't know. I'm assuming so.

5 That was our drill. Whomever came in
6 first was responsible for disarming within a couple
7 of minutes time and then notifying the Secret
8 Service.

9 Q Did you ever go into Mr. Foster's office
10 on the morning of July 21st?

11 A The day I came in following his --

12 Q Yes.

13 A -- death? No, I did not.

14 Q Could you see into Mr. Foster's office
15 just from looking in through the doorway?

16 A Yes.

17 Q Okay. What did it appear to you to be the
18 condition of Mr. Foster's office when you looked in?

19 A Unoccupied.

20 Q Were there any papers on the coffee table?

21 A I can't say for sure.

22 Q Do you recall if it appeared that papers

1 were neatly arranged on Mr. Foster's desk or whether
2 they had been disorganized on his desk?

3 A I don't recall disarray being something I
4 noticed.

5 Q Did you see Ms. Williams in the Counsel's
6 suite on the morning of July 21st?

7 A I believe she was one of several people
8 milling about, yes.

9 Q Did -- where was your desk located?

10 A Have you been in that office?

11 Q Yes.

12 A You have? I don't know how it is
13 currently configured, but when you walk into the
14 office through the little double doors, Betsy's desk
15 was the first one on the right --

16 Q Yes.

17 A -- abutting Bernie's desk and facing
18 Vince's.

19 Q Yes.

20 A Mine was behind.

21 Q Okay. Behind Ms. Pond's desk?

22 A Yes.

1 Q During the entire day, July 21, the day
2 after Mr. Foster's death, did you see anyone enter
3 Mr. Foster's office?

4 A As I've said before and will say again, I
5 am so unclear as to time frames that I hesitate to
6 say anything about when I saw what I saw. It is all
7 a blur to me in terms of -- I'm still unclear as to
8 what day it was that I came in and what day we flew
9 to Arkansas for the funeral.

10 But, that span of days is very, very hazy
11 to me.

12 Q Did you -- do you have any recollection at
13 all on that Wednesday, which would be the day after
14 Mr. Foster died, of anyone going into his office?

15 A Not a -- nothing I can say under oath as
16 being 100 percent sure.

17 Q Do you have any --

18 A Except maybe the picture coming out might
19 have been that day.

20 Q Okay. You recall that?

21 A I think that was that day.

22 Q Okay. Do you recall anything else?

1 A Just not with 100 percent sureness.

2 Q Say what you recall. And, to the extent
3 you don't recall something with a 100 percent --

4 A I thought Deb and Bernie may have gone in
5 that day. But, it might have been the next day.

6 I just am not sure.

7 Q You recall that at some point Ms. Gorham
8 and Mr. Nussbaum entered Mr. Foster's office?

9 A I believe so, yes.

10 Q Okay. And, you believe it was either the
11 day after Mr. Foster died or two days after Mr.
12 Foster died?

13 A It was in that time period. I'm just
14 unclear as to what day.

15 I'm sorry.

16 MR. GIUFFRA: Let's go off the record.

17 (An off-the-record discussion ensued.)

18 BY MR. GIUFFRA: (Continuing)

19 Q Did you know a person by the name of Craig
20 Livingstone?

21 A Yes.

22 Q Did you see Mr. Livingstone at all on the

1 day after Mr. Foster died?

2 A I believe he was there, yes.

3 Q Where did you see Mr. Livingstone?

4 A I believe he was one of the people who
5 came in and out, and I believe in Bernie's office.

6 Q Did you ever see Mr. Livingstone enter Mr.
7 Foster's office?

8 A I don't recall him doing that.

9 Q Was he someone who was a regular visitor
10 of Mr. Nussbaum?

11 A Not until that point.

12 Q Did he become a regular visitor of Mr.
13 Nussbaum after Mr. Foster's death or at least for
14 several days?

15 A He became more a presence thereafter than
16 prior. Bernie used to call him "Cliff."

17 He didn't know him well, even though he
18 was assigned to us technically.

19 Q Did you see Mr. Livingstone with a box in
20 the west wing on the morning after Mr. Foster's
21 death?

22 A I don't recall that.

1 Q Do you recall any discussion of a time
2 sensitive Clinton trust document on the 21st?

3 A No.

4 Q Do you recall any discussions that you may
5 have had with Mr. Nussbaum on the day after Mr.
6 Foster's death?

7 MR. BEHRE: Could you clarify subject
8 matter or specifics?

9 MR. GIUFFRA: All right. Why don't I
10 clarify that?

11 BY MR. GIUFFRA: (Continuing)

12 Q Do you recall any conversations with Mr.
13 Nussbaum bearing in any way on documents in Mr.
14 Foster's office on the day after Mr. Foster's death?

15 A No, not directly to me, I don't believe.

16 Q Okay. Do you recall Mr. Nussbaum asking
17 Ms. Gorham questions about how documents were
18 maintained in Mr. Foster's office?

19 A I believe so.

20 Q Okay. When do you recall him asking such
21 questions?

22 A Again, I --

1 Q Some time in this period.

2 A During this period?

3 Q What do you recall were the nature of the
4 conversations that Mr. Nussbaum had with Ms. Gorham?

5 A They appeared to be more clarification
6 questions, familiarizing him with what was where and
7 what their system was and so forth.

8 Q Did Ms. Gorham ever say anything to you
9 about the conversations that she had with Mr.
10 Nussbaum?

11 A She did. I don't recall the substance of
12 what she said.

13 She would come out and shake her head and
14 shrug her shoulders as though this was -- she was
15 confused as well.

16 Q When you say "come out," this was come out
17 of Mr. Foster's office or Mr. Nussbaum's office?

18 A And, again I don't recall where they --
19 where Bernie took Deborah.

20 Q Do you recall Ms. Williams asking anyone
21 in the Counsel's suite anything about documents in
22 Mr. Foster's office in the day after Mr. Foster's

1 death?

2 A No. I heard no such conversation.

3 Q Do you recall anyone other than Mr.

4 Nussbaum asking questions about documents in Mr.

5 Foster's office in the day after Mr. Foster's death?

6 A Well, there was some conversation as to

7 how -- in my presence, as to how the Park Police

8 investigation would be handled in terms of access to

9 documents in Mr. Foster's office.

10 Q What do you recall about the conversations

11 regarding the Park Police's access to the documents

12 in Mr. Foster's office?

13 A Well, I believe there was discussion as to

14 how -- how this would be done and exactly what sort

15 of arrangement would be made in terms of who would

16 look in the file and Executive privilege to be

17 exercised in terms of what would be readily available

18 and what would be just identified. And, it was my

19 understanding that the final decision was that he

20 would -- Bernie would go through them and identify

21 them by name but not show them.

22 Q Did Mr. Nussbaum express any concern about

1 allowing the Park Police to look at the documents in

2 Mr. Foster's office?

3 A Well, it was my understanding that that

4 was part of the discussion with Steve Neuwirth and, I

5 believe, Cliff Sloane.

6 Q Do you remember whether there was any

7 discussion of the fact that there were documents

8 related to the Clinton's private legal matters in Mr.

9 Foster's office?

10 A Yes.

11 Q What do you recall Mr. Neuwirth, Mr.

12 Sloane and Mr. Nussbaum discussing about the fact

13 that there were documents related to the Clinton's

14 private legal matters in Mr. Foster's office?

15 A I don't remember who had what opinion or

16 who held what stance. I do remember that there was

17 discussion about Executive privilege, about the

18 President and the First Lady's personal business,

19 personal legal business, and Mr. Foster's personal

20 paperwork, personal files.

21 But, nothing further. I don't know.

22 Q Did Ms. Gorham ever indicate to you at any

1 time that she noticed that any papers were missing
2 from Mr. Foster's office when she went and looked?

3 A She did not.

4 Q Did she ever indicate to you that there
5 was a -- strike that.

6 Were you aware that Ms. Gorham maintained
7 an index of documents in Mr. Foster's office?

8 A She kept -- and I don't know. I should
9 say I don't know on that one.

10 Q Okay. In the day or two after Mr.
11 Foster's death -- strike that.

12 Did you know Susan Thomases?

13 A Yes.

14 Q Who is Susan Thomases?

15 A She is a very good friend of the First
16 Lady, as well as a very good friend of Mr.

17 Nussbaum's.

18 Q Was she a frequent caller of Mr. Nussbaum?

19 A Yes.

20 Q Was she a frequent caller of Mr. Foster?

21 A I don't know.

22 Q Okay. Do you recall whether Ms. Thomases

80

1 made any phone calls to Mr. Nussbaum in the day or
2 two after Mr. Foster's death?

3 A I am quite certain she did.

4 Q Do you recall approximately how many phone
5 calls there might have been?

6 A I don't.

7 Q Do you recall whether Ms. Thomases ever
8 visited the Counsel's suite in the day or two after
9 Mr. Foster's death?

10 A Susan was there frequently. I can't say
11 for sure whether she was there in those days. It's
12 not clear to me.

13 Q Do you recall any discussions in the day
14 or two after Mr. Foster's death in which Ms. Thomases
15 was mentioned?

16 A By whom?

17 Q By anyone?

18 A My recollection is not clear.

19 Q Do you recall whether the First Lady
20 contacted Mr. Nussbaum in the day or two after Mr.
21 Foster's death?

22 A Your question was do I recall this?

- 1 Q Yes.
 2 A I believe they spoke by phone.
 3 Q Do you recall whether it was one time, two
 4 times?
 5 A I don't.
 6 Q Do you recall the time of the phone call?
 7 A I don't.
 8 Q Do you have any understanding as to what
 9 was the First Lady's view with regard to how the
 10 search of Mr. Foster's office would proceed?
 11 A I don't. I recall that she was out of
 12 town at the time.
 13 Q Did anyone indicate to you whether the
 14 First Lady was at all concerned about law enforcement
 15 officers looking at documents contained in Mr.
 16 Foster's office?
 17 A I have no direct knowledge of that.
 18 Q Do you have any indirect knowledge?
 19 A Not really.
 20 Q When you say "not really," that means
 21 what?
 22 A I just don't really know. I'm not

- 1 comfortable saying, "Yes, I heard something," if I'm
 2 not clear on it, if I'm too fuzzy on it.
 3 Q Do you have a fuzzy recollection that
 4 perhaps there was some discussion of what the First
 5 Lady's views were with regard to whether the law
 6 enforcement people should look at documents in Mr.
 7 Foster's office?
 8 If it's a fuzzy recollection, say, "I have
 9 a fuzzy recollection" or "a vague recollection,"
 10 whatever you have.
 11 A I'm just not -- I'm not sure what I know
 12 on that. So, I don't want to say anything on that.
 13 Q And, so would it be fair to say your
 14 testimony is you have no recollection as to what the
 15 First Lady's views were with regard as to how the
 16 search of Mr. Foster's office should proceed?
 17 A I think that's accurate.
 18 Q Okay. Do you have any understanding as to
 19 what Ms. Williams' views were with regard to whether
 20 the law enforcement people should be able to look at
 21 documents in Mr. Foster's office?
 22 A I believe Maggie provided input. I don't

1 know what that input was.

2 Q Do you recall the names of any of the
3 other people who might have provided input with
4 regard to how the review of documents in Mr. Foster's
5 office should proceed?

6 A My own impression was that it was Bernie,
7 Steve Neuwirth, Cliff Sloane, Maggie Williams. And,
8 those are the only ones that I would feel comfortable
9 saying I thought might know.

10 Q Okay. Who is Caroline Huber?

11 A She is a long-time -- I believe long-time
12 associate of the Clintons. And, if I'm right, I
13 believe she was part of the First Lady's staff.

14 Q Did Ms. Huber ever visit the Counsel's
15 suite?

16 A Yes.

17 Q Was she a regular visitor of the Counsel's
18 suite?

19 A I don't know that she was a regular
20 visitor, but she was certainly a frequent telephone
21 caller to Vince.

22 Q She was a frequent telephone caller to Mr.

1 Foster?

2 A Yes.

3 Q Did she -- was she someone who spoke to
4 Mr. Nussbaum by telephone?

5 A I don't recall his ever talking to her.
6 If he did, through me, it would have been maybe once.

7

8 I mean, I don't recall ever even taking a
9 call from Caroline to Bernie.

10 Q Did you ever see Ms. Huber either bring
11 papers to Mr. Foster or take papers from Mr. Foster?

12 A I have an independent recollection of
13 Caroline coming into Vince's office with files and
14 leaving that way as well. She worked in the -- I
15 believe in the east wing.

16 I don't know for whom those files were
17 intended or if they were just being carried on her
18 way elsewhere. But, I saw her fairly often.

19 Q Do you know whether Mr. Nussbaum tried to
20 contact Caroline Huber in the day or two after Mr.
21 Foster's death?

22 A I don't know.

1 Q Did you see Caroline Huber in the
2 Counsel's suite in the day or two after Mr. Foster's
3 death?

4 A I really don't remember seeing Caroline.

5 Q Do you recall whether Patsy Thomason
6 contacted Mr. Nussbaum in the day or two after Mr.
7 Foster's death?

8 A Again, I'm unclear as to time frame.

9 Q Was she someone who was a frequent caller
10 of Mr. Foster?

11 A Oh, of Mr. Foster? She was an infrequent,
12 if ever, phone caller to Bernie. And, perhaps more
13 so to Vince, but I don't know how often.

14 Let me say one thing. I'm only speaking
15 to the phone calls I took.

16 Q Or overheard.

17 A Or overheard. I'm not speaking to the
18 general frequency of all incoming calls to the
19 Counsel's office.

20 There were several of us who shared that
21 duty.

22 Q Do you recall seeing Ms. Thomason in the

1 Counsel's suite in the day or two after Mr. Foster's
2 death?

3 A I don't recall seeing Patsy.

4 Q Do you recall seeing Mr. Watkins in the
5 day or two after Mr. Foster's death?

6 A I don't.

7 Q Do you recall whether Mr. Watkins might
8 have called Mr. Nussbaum?

9 A I don't believe I took a call like that.

10 Q Do you recall if a Secret Service guard
11 was ever placed -- posted, excuse me, outside of Mr.
12 Foster's desk -- outside of Mr. -- strike that.

13 Do you recall whether a Secret Service
14 guard was posted outside of Mr. Foster's office in
15 the day or two after his death?

16 A I arranged for that Secret Service guard.

17 Q Okay. Please tell us what you recall
18 about arranging for that Secret Service guard.

19 A Well, it's a little embarrassing. There
20 are different portions of the Secret Service, all of
21 whom have different areas of responsibility.

22 So, I called several different numbers

1 before I hit on the one that would provide a body to
2 secure that office.

3 Q Do you recall when you were asked to
4 secure the office?

5 A I wasn't. I asked.

6 Q You were the one who independently came up
7 with the idea of securing the office?

8 A When I first came in in the morning and
9 saw that it was not secured and Betsy was reacting to
10 her situation, I said, "Why is this not secure? Why
11 is there no tape? Why is there no guard?"

12 She said, "No one has done that yet."

13 Q Why did you think there should be a tape
14 or a guard in front of the office?

15 A Well, maybe it's my background. I've
16 worked on the covert side of the Department of
17 Defense for 15 years or actually 12, not counting my
18 other time.

19 And, instantly, to me, that made -- it
20 made little sense to do anything else but ensure that
21 we were not violating -- I mean, it was obviously a
22 history-making situation that would come to if not

1 this end then at least a very visible end. It just
2 didn't occur to me not to do that.

3 Q Okay. Did you say anything to anyone
4 other than Betsy about that?

5 A Well, Bernie -- when Bernie came in, he
6 was immediately behind closed doors. I believe
7 several of the associates were also inside.

8 So, there was no one to really be able to
9 ask. And, at the same time that I was trying to
10 determine which portion of the Secret Service to get
11 by phone --

12 Q When Mr. Nussbaum arrived, was the door to
13 Mr. Foster's office open?

14 MR. BEHRE: Can the witness just finishing
15 answering? I don't think she was done.

16 THE DEPONENT: Well, at any rate, I
17 believe Bernie or Steve Neuwirth or one of them --
18 and I don't recall which one -- stuck their head out
19 and said, "Someone better arrange to have an agent
20 posted." So, it was sort of a simultaneous.

21 And, I was grateful that I was farther
22 along into the process so that once the command was

1 issued it didn't take us but 30 minutes or whatever
2 it did to get a guard posted.

3 BY MR. GIUFFRA: (Continuing)

4 Q Do you recall about what time you were
5 asked to get a guard?

6 A Nine-fifteen, 9:30. I think it was in
7 that time frame.

8 Q When Mr. Nussbaum entered the office in
9 the morning, was the door to Mr. Foster's office
10 open?

11 A I don't recall if it was when Bernie came
12 in.

13 Q Do you recall shutting the door?

14 A I didn't touch the door.

15 Q Do you recall whether Ms. Pond shut the
16 door?

17 A I don't recall that.

18 Q Do you recall seeing anyone shut the door?

19 A No. The door was open and then it was
20 shut.

21 Q You just can't remember --

22 A I didn't see anyone physically do that.

1 It had no lock at the time.

2 Q Now, you've testified that you recall Mr.
3 Nussbaum entering Mr. Foster's office to remove a
4 photo.

5 Did that occur when President Clinton
6 arrived in the Counsel's suite?

7 A That's my memory.

8 MR. BEHRE: I don't think the witness
9 testified as to who she saw with the photo. She just
10 said that she saw a photo removed.

11 THE DEPONENT: My memory is that he wanted
12 to show President Clinton the kindergarten photo, the
13 nursery school photo, of Vincent and the President.
14 And, I thought it was that time that it was Bernie
15 who went in and got it out of Vince's office.

16 BY MR. GIUFFRA: (Continuing)

17 Q Do you -- during the course of that day,
18 do you recall seeing anyone else enter Mr. Foster's
19 office?

20 A I told you: I am just too unclear as to
21 time frame.

22 Q Okay. I understand. Do you recall Mr.

1 Sloane bringing trash or a trash bag to Mr. Foster's
2 office?
3 A You mean, back into his office?
4 Q Yes.
5 A Yes, yes.
6 Q Do you recall when that happened?
7 A No.
8 Q But, you have a recollection of him
9 bringing a bag of trash?
10 A Right, because we told them that we could
11 retrieve -- we thought we could retrieve trash in
12 burn bags.
13 Q Who did you contact at the Secret Service
14 to get the guard posted?
15 A To tell you the truth, I went through so
16 many different, frustrating numbers of bureaucracy to
17 find -- by the time I made contact with probably yet
18 another wrong office, I was very upset and said, "I
19 don't care what your responsibilities are. Send me a
20 guard now."
21 Q Okay.
22 A So, I don't know.

1 Q Do you recall seeing any Park Police
2 officers on the 21st?
3 A I don't know if that's the day they were
4 there or not, to tell you the truth. I know that
5 there were several that came and talked to us and so
6 forth.
7 Q Okay. Do you recall a meeting with Mr.
8 Sloane and Mr. Neuwirth in which they discussed with
9 yourself and some of the other people that worked in
10 the suite that the Park Police would be interviewing
11 you?
12 A Yes.
13 Q And, what did Mr. Sloane and Mr. Neuwirth
14 say in the course of this meeting?
15 A I don't recall either one of them having
16 much to say. It was Bernie who conducted the
17 meeting.
18 Q And, what did Bernie say during the course
19 of this meeting?
20 A Steve and Cliff were present. And, Bernie
21 advised us that we would be questioned by the Park
22 Police and, I think, the F.B.I.

1 But, I recall that we would be questioned
2 and that we were to be honest, truthful and that we
3 would each be accompanied by an associate counsel.

4 Q Do you recall anything more about what Mr.
5 Nussbaum said?

6 A Beyond being truthful and honest, not to
7 speculate or to embellish but to be straightforward
8 and truthful and answer the questions as asked.

9 Q Do you recall any indication as to whether
10 Park Police officers were angry or upset -- strike
11 that.

12 At any time in the day or two after Mr.
13 Foster's death, do you recall any indication that you
14 received that the Park Police officers were in any
15 way angry or upset about the course of their
16 investigation?

17 A I believe we were aware or heard that they
18 were not pleased with the way the sifting and
19 identifying of files was done.

20 Q In other words, after the sifting of the
21 files occurred?

22 A That's the only time I recollect that they

1 had an objection that I was aware of.

2 Q Let's go -- do you recall when you were
3 interviewed by the Park Police?

4 A I don't.

5 Q Okay. Do you recall if your interview
6 with the Park Police was before or after the review
7 process of documents in Mr. Foster's office?

8 A I truly don't.

9 Q Okay. What do you recall about the
10 interview that the Park Police conducted?

11 A It was cursory, at best.

12 Q Do you recall -- do you recall whether
13 anybody from the Park Police objected to the fact
14 that someone from the Counsel's Office was present
15 during your interview?

16 A I don't recall.

17 Q Okay. Do you recall Mr. Nussbaum
18 receiving phone calls from a Mr. Margolis?

19 A He received frequent phone calls from Mr.
20 Margolis.

21 Q In this time period?

22 A That, I don't know.

1 Q Was Mr. Margolis someone who frequently
2 called Mr. Nussbaum?

3 A The name is very familiar, yes.

4 Q Do you recall a Mr. Hyman calling?

5 A Phillip?

6 Q Yes.

7 A Yes. But, again, let me clarify, I am
8 fuzzy on time frames.

9 Q I understand. And, it would be your
10 testimony that you recall seeing Ms. Williams in the
11 Counsel's suite in the day or two after Mr. Foster's
12 death?

13 A Yes.

14 Q Do you recall seeing her more often than
15 usual or about the same?

16 Or, did she seem to be a presence?

17 A Maggie was always a presence.

18 Q Do you recall overhearing any
19 conversations between Ms. Williams and Mr. Nussbaum?

20 A Nothing substantive.

21 Q Do you recall hearing anything more than
22 what you've testified to about how the procedure in

1 the search of Mr. Foster's office would proceed?

2 A Beyond what I've said?

3 Q Yes.

4 A No.

5 Q Do you recall any discussion of a change
6 in the procedure for the review of documents in Mr.
7 Foster's office?

8 A No.

9 Q Do you recall anyone from -- strike that.

10 Do you recall whether anyone from the
11 Department of Justice expressed any concern that they
12 would not be allowed to look at the documents in Mr.
13 Foster's office?

14 A I'm afraid I don't understand. Do you
15 mean objecting to the fact that the Counsel's Office
16 was being less cooperative?

17 Q Yes.

18 A No, not definitively.

19 Q Do you have any impression that there was
20 some upsetness on the part of the --

21 A I believe there was some dialogue. And, I
22 believe someone at Justice was involved -- and I'm

1 not certain whom -- but also that there might have
2 been someone at Justice who was more agreeable to the
3 way the White House had planned to do so.

4 Q What do you recall about the actual review
5 of documents in Mr. Foster's office, if any?

6 A Nothing.

7 Q Okay. Now, you weren't present?

8 A No.

9 Q Was the door shut during the review?

10 MR. BEHRE: Can you lay the foundation by
11 asking if she knows there was a review?

12 MR. GIUFFRA: Okay.

13 BY MR. GIUFFRA: (Continuing)

14 Q Do you know that a review of the documents
15 in Mr. Foster's office occurred in the presence of
16 law enforcement officers?

17 A I do.

18 Q Okay. When do you think that review
19 occurred?

20 A I don't know.

21 Q Okay. But, you recall the review
22 occurring?

1 A Yes.

2 Q Do you recall the law enforcement officers
3 going into Mr. Foster's office?

4 A I do.

5 Q Do you recall whether the door was shut
6 during this period when the law enforcement officers
7 were in Mr. Foster's office?

8 A I don't recall if they shut the door.

9 Q And, you could not hear anything that was
10 being said inside the room?

11 A I was just thinking, as you asked that,
12 that I think I recall Bernie has a -- tends to have a
13 louder voice than others in normal conversation, so I
14 do believe I heard Bernie. But, I don't know that
15 that meant the door was open or shut.

16 Q Do you recall the substance of what Mr.
17 Nussbaum said?

18 A No.

19 Q After the review was completed, did you
20 hear anyone -- any of the law enforcement officers --
21 say anything?

22 A No.

1 Q Prior to the review, did any of the law
2 enforcement officers say anything in your presence
3 that you can recall?

4 A I don't recall.

5 Q Okay. After the law enforcement officers
6 left the Counsel's suite, do you recall what
7 happened?

8 A I don't. I'm not sure when that was.

9 Q Do you recall the time when Ms. Gorham
10 entered Mr. Foster's office with Mr. Nussbaum?

11 A I believe I've already said that it was my
12 impression that they went in there together.

13 Q Okay. Do you recall for about how long
14 they were in the office?

15 A I -- no.

16 Q Do you ever recall seeing Ms. Williams
17 enter Mr. Foster's office?

18 A I don't have a clear recollection of that.

19 Q Do you recall -- did you ever see Mr.
20 Neuwirth go into Mr. Foster's office after the
21 review?

22 A I just don't know.

100

1 MR. BEHRE: You are asking for before the
2 Park Police supposedly reviewed the documents?

3 THE DEPONENT: He said after.

4 MR. GIUFFRA: After.

5 MR. BEHRE: After?

6 MR. GIUFFRA: Yeah. Let's go off the
7 record for a second.

8 (An off-the-record discussion ensued.)

9 MR. GIUFFRA: Given the fact that we have
10 a time constraint here, if, at any point, I ask a
11 question that is in any way ambiguous or you want to
12 ask a follow-up question, Lance, just do it.

13 MR. COLE: I don't want to interrupt your
14 questioning, but she did say one thing that was of
15 some interest to me that you didn't follow up on, and
16 that was when she said that she recalls that someone
17 at the Department of Justice was more agreeable to
18 the way the White House wanted to conduct the search.
19 And, I would be curious if she had any further
20 recollection about that.

21 THE DEPONENT: Is that a question?

22 CROSS EXAMINATION

1 BY MR. COLE:

2 Q Yes, if that's a question that you can
3 respond to?

4 A I believe it was a dialogue that was
5 taking place that, for whatever reason, we or at
6 least I was aware of. And, I don't know for certain
7 who the players were.

8 I just recall a conflict or a discussion.
9 I -- strike "conflict," but a discussion as to how
10 this might best be done.

11 Q And, do you recall whether that was a
12 discussion that involved representatives of the
13 Department of Justice?

14 Do you have any recollection as to that?

15 A I thought so. I don't know for sure.

16 Q And, what is it that made you think that
17 someone from the Department of Justice was more
18 agreeable to what the White House was proposing?

19 A I thought I heard a name that was being
20 used as saying so and so agrees or thinks that this
21 is a better way or whatever -- not --

22 MR. GIUFFRA: Was this something that

1 someone at the White House said?

2 THE DEPONENT: Yes.

3 REDIRECT EXAMINATION

4 BY MR. GIUFFRA:

5 Q Oh, so you did not overhear two Department
6 of Justice officials talking?

7 A Oh, no. No, no.

8 Q Okay. So, what you are saying is you
9 heard someone from the White House Counsel's Office
10 saying that someone who you identified as being a
11 Department of Justice official --

12 A Right. No, I didn't --

13 Q -- was somewhat agreeable?

14 A -- ever hear Department of Justice
15 officials speak.

16 Q Okay. Did there ever come a time when you
17 saw any documents being removed from Mr. Foster's
18 office?

19 A Yes.

20 Q When do you recall seeing documents being
21 removed from Mr. Foster's office?

22 A I'm sorry, I don't remember when.

1 Q Okay. Do you recall who you saw remove
2 documents from Mr. Foster's office?

3 A I'm unclear as to who it was who brought
4 out the box and put it in front of Deb Gorham's desk
5 to be transported elsewhere.

6 Q But, it's your recollection that someone
7 brought a box from Mr. Foster's office and put it in
8 front of Ms. Gorham's office?

9 A In front of her desk.

10 Q In front of her desk? Do you recall who
11 took the box?

12 A There was more than one box.

13 Q Do you recall how many boxes?

14 A No.

15 Q Was it more than two?

16 A The boxes were in front of Deb's desk
17 before they went to the residence. And, I'm not sure
18 how many there were.

19 I asked, you know, "What are you doing?
20 What's going on?"

21 Q Who did you ask?

22 A Deb.

1 Q Are you fairly certain it was more than
2 one box?

3 A I thought so.

4 Q Who else was involved with these boxes?

5 A Involved, meaning how they got from one
6 place to another?

7 Q Who was present when the boxes --

8 A Well, we were all sitting there.

9 Q Was Ms. Williams present?

10 A I don't -- I don't recall that she was
11 there when the boxes appeared. I believe that she
12 had something to do with the decision to move them
13 and where they were going.

14 Q Do you know -- did you see Mr. Nussbaum
15 when the boxes appeared?

16 A I didn't see Bernie carrying a box, if
17 that's your question.

18 Q How did you learn that the boxes were to
19 go to the residence?

20 A I asked Deborah.

21 Q And, she said, "They are going to the
22 residence?"

1 A She said that they were going to the
2 residence and to Mr. Foster's attorney, and I thought
3 she said to the President's personal attorney, which
4 at the time I thought was Vince. So, I was confused.

5 Q Did anyone indicate to you why the boxes
6 were going to the residence?

7 A Only in what Deborah said to me in the way
8 of explanation.

9 Q Did Deborah indicate to you that the
10 President or First Lady had to review the documents?

11 A No. She said that they were the personal
12 files of Mr. Foster and those of the President and
13 the First Lady.

14 Q Do you know who else was involved --
15 strike that.

16 Do you know who was involved in the
17 decision to have the boxes go to the residence?

18 A I don't know who made that decision.

19 Q Do you know whether -- do you have any
20 recollection whether the First Lady called at
21 approximately at any time near the time these boxes
22 appeared?

1 A Not personally, I don't know.

2 Q Okay. Do you know how the boxes were
3 transported to the residence?

4 A Well, I don't know how they were
5 transported to the residence. But, I believe Tom
6 Castleton carried one or two boxes, at least one.

7 I know he carried at least one. I saw him
8 with one box.

9 Q And, did he tell you that he carried them
10 to the residence?

11 A He may have given us an explanation. I
12 don't recall.

13 RECROSS EXAMINATION

14 BY MR. COLE:

15 Q Mr. Giuffra said "them," and I believe you
16 said that you recalled him carrying one box. Do you
17 have any recollection of him carrying more than one
18 box to the residence?

19 A I don't remember how many he carried. I
20 remember seeing him with a box and leaving, leaving
21 the west wing.

22 MR. COLE: I would just like to make the

1 record as clear as we can on this.

2 MR. GIUFFRA: No problem.

3 MR. COLE: This is a point of some
4 importance, I think.

5 REDIRECT EXAMINATION

6 BY MR. GIUFFRA:

7 Q Did Mr. Castleton ever indicate to you
8 where he had been with the box?

9 A I don't recall if he actually told me or
10 not.

11 Q Did you see Ms. Williams present when Mr.
12 Castleton carried -- was carrying the box?

13 Was she escorting him?

14 A Was she escorting him? I don't know.

15 Q Did you know -- let me ask this question:
16 Did there come a time when a lock was placed on Mr.
17 Foster's office door?

18 A Yes.

19 Q When was that?

20 A Again, I'm unsure of the day.

21 Q A day or two after Mr. Foster's death?

22 A It was after his death.

1 Q Do you know who had a key to that door?

2 A I didn't ask.

3 Q Did the Secret -- do you recall when the
4 Secret Service guard was no longer posted at the door
5 to Mr. Foster's office?

6 A Yes, but I don't recall when.

7 Q After the -- after the incident involving
8 the box with Mr. Castleton, do you ever again recall
9 seeing boxes being taken out of Mr. Foster's office?

10 A I don't recall other boxes.

11 Q I believe -- did you go to Mr. Foster's
12 funeral in Little Rock?

13 A Yes.

14 Q Do you recall any discussion of the
15 documents in Mr. Foster's office when you went to
16 Little Rock?

17 A No.

18 Q Okay. Did there come a time when you
19 learned that Mr. Steve Neuwirth had discovered scraps
20 of paper in the bottom of Mr. Foster's briefcase?

21 A Yes.

22 Q And, do you recall when that was?

1 A No.

2 Q Okay. Where were you when you learned
3 that Mr. Neuwirth discovered scraps of paper in the
4 bottom of Mr. Foster's briefcase?

5 A I don't know where I was when I learned
6 that that was what he had discovered. I know I was
7 at my desk when he stuck his head out and said, "Get
8 Bernie," and was in a panic.

9 And, Bernie was in Mac's office. And, he
10 asked me to get him anyway.

11 And, I asked him had he found something.
12 He said, "Yes."

13 But, at that time, I didn't know what
14 until later.

15 Q So, Mr. Neuwirth was in Mr. Foster's
16 office?

17 A No. He stuck his head out of Bernie's
18 office.

19 Q Oh, he was in Bernie's office?

20 A Yes.

21 Q Had he been in Mr. Foster's office?

22 A I don't know.

1 Q So, at one point, he -- when he stuck his
2 head out of Mr. Nussbaum's office, was the door to
3 Mr. Nussbaum's office shut?

4 A Yes. It was always shut at that point.

5 Q And, you did not see him moving from Mr.
6 Foster's office --

7 A I didn't.

8 Q -- to Mr. Nussbaum's office?

9 A No.

10 Q And, he seemed agitated to you?

11 A Yes.

12 Q Very agitated?

13 A He turned white, very -- he looked very
14 pale. He looked distressed.

15 Q And, when Mr. Nussbaum arrived, what
16 happened?

17 A He went directly into his office and shut
18 the door.

19 Q And, do you recall any incoming or
20 outgoing phone calls during this period?

21 A I don't.

22 Q Do you recall if the First Lady came to

1 Mr. Nussbaum's office after Mr. Neuwirth stuck his
2 head out?

3 A I'm not sure if that's when I saw her or
4 not, so I would say no. I don't recall.

5 Q Do you recall her coming to the suite any
6 time near the time when the note was discovered?

7 A Well, I recall her coming to the suite.
8 But, I don't recall what day that was.

9 And, she went in with Bernie and then
10 gazed into Vince's office. So -- and then just left.

11 Q Do you recall about how long she was in
12 Mr. Nussbaum's office?

13 A Some time. No idea as to -- I can't tell
14 you if it was 15 minutes or 30 or 10.

15 Q Okay. When did you learn what Mr.
16 Neuwirth had discovered?

17 A Oh, I believe I learned that that same
18 day.

19 Q And, who told you what had been
20 discovered?

21 A I asked Bernie.

22 Q And, what did Bernie say?

1 A I believe Bernie told me that it was a
2 ripped up writing of Vince's in the bottom of the
3 briefcase. And, then he just said, "It's so sad."

4 I remember him saying that, "It's just so
5 sad."

6 Q Do you recall where Ms. Gorham was when
7 the note was discovered?

8 A I don't recall if she was at her desk or
9 not. I recall -- I am going to offer this, because I
10 think it's important.

11 I recall thinking those must have been the
12 yellow sticky notes Deb was talking about at the
13 bottom of the briefcase when I learned that it was a
14 yellow, ripped up, legal piece of paper.

15 Q Well, what do you mean by those were the
16 yellow sticky notes that Deb was talking about?

17 A Well, I asked Deb early on had they looked
18 in the briefcase for a note, because they looked
19 everywhere. And, she said, "The briefcase is empty
20 except for a bunch of those little yellow sticky
21 notes."

22 Q When do you recall Ms. Gorham mentioning

1 to you that there were yellow sticky notes in the
2 bottom of the briefcase?

3 A It was after she and Bernie had been --

4 Q In the office?

5 A -- in the office, because Deborah was not
6 particularly forthcoming. She is a very private
7 person.

8 We -- I asked her -- I recall asking her,
9 "Well, did you find anything? Were there notes for
10 his children, anything?" She said, "No, nothing."

11 I said, "Did you look everywhere?" And, I
12 think she said, "Yes."

13 And, I said, "Did you look in his
14 briefcase," because I knew he had not left with a
15 briefcase the day before. And, she said, "It's empty
16 except for a bunch of little yellow sticky notes."

17 Q Let me ask a question: Did he normally
18 take his briefcase home?

19 A Oh, yeah. But, a caveat. When he came in
20 in the morning and left in the evening.

21 Q Yeah.

22 A I saw him more sporadically, because I

1 didn't work his hours. But, whenever I saw him come
2 in or leave for the day on the odd occasions that I
3 was there as late as he, he had his briefcase in his
4 hand.

5 Q When she -- what more did Ms. Gorham say
6 about the yellow sticky notes?

7 A That was all.

8 Q She just said there were yellow sticky
9 notes in the bottom of the briefcase?

10 A Yeah.

11 Q Did she indicate to you that anyone had
12 looked at what the yellow sticky notes were?

13 A She didn't. It was a throw-away comment.

14 Q Did she indicate to you whether Mr.
15 Nussbaum was aware there were yellow sticky notes in
16 the bottom of the briefcase?

17 A She didn't tell me if he was aware.

18 Q Okay. And, you recall the yellow sticky
19 note comment because of the fact that the scraps were
20 found --

21 A Yes.

22 Q -- several days later?

1 A Yes.

2 Q And, the comment she made to you about the
3 yellow sticky notes, you are confident that was
4 before Mr. Neuwirth discovered the note?

5 A Absolutely.

6 Q Okay. Do you know whether Ms. Gorham said
7 anything about the yellow sticky notes to anyone else
8 besides yourself?

9 A Well, I don't know if anyone else was in
10 the office. So, I don't know if anyone asked and if
11 she offered that or if anyone else heard the
12 conversation.

13 But, I am definite on that point, because
14 I thought --

15 Q She indicated --

16 A -- to myself how awful that they didn't
17 pursue those yellow sticky notes sooner.

18 Q Do you recall Ms. Gorham indicating
19 whether she had actually looked into the briefcase
20 and seen the yellow --

21 A She didn't say that. She said --

22 Q "I saw the yellow sticky notes?"

116

1 A At the bottom of the briefcase.

2 Q All right. After Mr. Neuwirth discovered
3 the note, did you say anything to Ms. Gorham about
4 what Ms. Gorham had said to you several days before
5 about the yellow sticky notes?

6 A I think I did.

7 Q What did Ms. Gorham say?

8 A "It must have been," you know, that kind
9 of thing. I don't recall her exact verbiage.

10 But, I was stunned, thinking here it sat
11 under our noses and amazed, I guess. And, I think I
12 said that to Deborah. And, she said, "Yeah."

13 Q Did she ever indicate to you whether she
14 told Mr. Nussbaum about the yellow sticky notes?

15 A Well, I didn't get the sense it was her
16 place to -- I don't know that she necessarily was the
17 one that went like this. I don't know who did that.

18 Q Do you know whether she was told there
19 were yellow sticky notes in the briefcase by Mr.
20 Nussbaum?

21 A She only said it was empty except for a
22 bunch of yellow sticky notes. So, I don't know who

1 determined that they were yellow sticky notes.

2 Q Did you ever discuss the circumstances
3 upon which Mr. Neuwirth discovered the note with Mr.
4 Nussbaum?

5 A I think I asked him later on how this
6 happened or what it was. And, he explained that it
7 was a yellow legal pad, a handwritten note, I
8 believe, of Vince's.

9 Q Did he ever indicate to you why he had not
10 discovered the note before Mr. Neuwirth did?

11 A No. I don't believe he did.

12 Q Did you ever ask him why he didn't
13 discover the note before Mr. Neuwirth discovered the
14 note?

15 A I don't know that I actually had the nerve
16 to say at that point to Bernie, "If you had just
17 looked, you would have seen they weren't yellow
18 sticky notes," but that was in my thought. That was
19 my thought.

20 Q Did you ever discuss with Mr. Neuwirth why
21 Mr. Nussbaum had not found the note in the bottom of
22 the briefcase?

1 A No.

2 Q Did you ever -- strike that.

3 Did you ever hear that Mr. Sloane had made
4 a comment to Mr. Neuwirth -- Mr. Nussbaum about the
5 fact that there were yellow pieces of paper in the
6 bottom of the briefcase?

7 A No. I have read that since. I can't say.
8 I don't believe I knew that at the time at all.

9 Q Okay. Do you recall any speculation by
10 anyone -- strike that.

11 Do you recall any discussion as to who
12 might have torn the note?

13 A No.

14 Q Do you recall any speculation as to
15 whether it was a one-page note or a two-page note?

16 A I remember a discussion about a missed
17 piece, a piece that wasn't there that should have
18 been apparently.

19 Q Let me show you a document that has been
20 marked as OIC-154 to 161. This is an F.B.I. 302.

21 (The deponent is looking at the document.)

22 A What should I be looking at in this short

1 period of time?

2 Q My only question is: Do you recall being
3 interviewed by the F.B.I. about the events you have
4 discussed here today?

5 A Is that the Fiske --

6 Q Yes.

7 A Yes.

8 COURT REPORTER: Is that the what?

9 THE DEPONENT: The Fiske investigation.

10 BY MR. GIUFFRA: (Continuing)

11 Q Yes?

12 A Yes.

13 Q Do you recall meeting with anyone from the
14 Starr investigation?

15 A Yes.

16 Q Do you recall testifying to the Grand
17 Jury?

18 A Yes.

19 Q Okay. When you first spoke to Mr. Fiske's
20 investigators, the first time you spoke to any law
21 enforcement, do you remember discussing this issue of
22 the yellow sticky notes?

120

1 A I believe I did.

2 Q And, so every time you've ever testified
3 about these matters, you have always mentioned the
4 yellow sticky --

5 MR. BEHRE: I fear that we are getting
6 into Grand Jury material, which would be
7 inappropriate.

8 MR. GIUFFRA: Okay. I just want to --

9 MR. BEHRE: I'm sure you don't want to get
10 into that either.

11 MR. GIUFFRA: No, I don't.

12 BY MR. GIUFFRA: (Continuing)

13 Q When you spoke to the F.B.I. at the
14 beginning, do you recall speaking about the yellow
15 sticky notes?

16 A I absolutely thought I did. Are you
17 saying it's not in there?

18 Q No, no. I'm not saying it isn't. I just
19 wanted to make sure you did, that's all.

20 MR. BEHRE: So the record is clear, the
21 witness has not had an opportunity to read this
22 document for any purpose other than to see one page

1 of it.

2 MR. GIUFFRA: Just to refresh her
3 recollection that she had been spoken to by the
4 F.B.I.

5 MR. BEHRE: Okay.

6 MR. GIUFFRA: And, I will let the record
7 reflect that the pages that we have contain
8 redactions.

9 THE DEPONENT: Is it inclusive of my
10 entire testimony --

11 MR. GIUFFRA: No.

12 THE DEPONENT: -- other than the
13 redactions, though?

14 MR. GIUFFRA: It includes your entire
15 testimony, but it does not include, I don't think --
16 what we have does not include your entire testimony.
17 This is an eight-page document of which we have five
18 pages of text and then three blank pages.

19 THE DEPONENT: If I was asked anything
20 about the yellow torn up note during the Fiske
21 investigation, I would have most definitely addressed
22 those.

1 MR. GIUFFRA: Okay.

2 THE DEPONENT: As I'm certain I would have
3 with the Starr people, if asked. I would like to
4 know if it's in there.

5 MR. GIUFFRA: Let's go off the record.

6 (An off-the-record discussion ensued.)

7 BY MR. GIUFFRA: (Continuing)

8 Q Ms. Tripp, bearing in mind the subject
9 matter that the Senate is now looking at, meaning the
10 handling of the papers in Mr. Foster's office, are
11 you aware of any other evidence that you might have
12 that the Senate should be aware of, any observations
13 you had, any discussions you had?

14 A I'm not fully aware of what you are aware
15 of and what you are not aware of, so I don't know
16 what would be relevant anyway.

17 Q Do you recall any other discussions you
18 had with anyone about the circumstances other than
19 law enforcement, of the circumstances in which this
20 note was found in the briefcase?

21 MR. BEHRE: And, would you include in law
22 enforcement the Office of Independent Counsel?

1 MR. GIUFFRA: Yes. I'm excluding them.

2 THE DEPONENT: Well, only that I would
3 reiterate that this was -- there is a definite -- the
4 sticky notes obviously turned out to be the other
5 note. And, it appears that I was one of the few who
6 thought that.

7 So, perhaps I'm wrong. I don't think I
8 am.

9 BY MR. GIUFFRA: (Continuing)

10 Q Did you ever hear any discussions while
11 you were in the Counsel's Office other than those
12 you've testified to with regard to the circumstances
13 in which the note was discovered?

14 Did you ever hear Bernie discuss it with
15 someone else, for example?

16 A Well, there was a great deal of dialogue
17 in the outer office after it was discovered but
18 nothing substantive, nothing that -- no, nothing of
19 any worth, just speculation as to whether he would
20 have done such a thing, would he have used a burn
21 bag, the trash.

22 Q You mean speculation as to whether the

1 note was originally in the briefcase?

2 A Right.

3 Q When did you hear such speculation?

4 A Just during that time frame after the note
5 was found.

6 Q Do you recall who would made such a
7 comment?

8 A Deborah.

9 Q She was surprised that the note was found
10 in the briefcase?

11 A Yes, I think so.

12 Q She thought that Mr. Foster was, you know,
13 a tidy person and if he was going to tear something
14 else up he would have thrown it in the garbage, for
15 example?

16 MR. BEHRE: I don't know how this witness
17 could testify what Deb thought about.

18 MR. GIUFFRA: Well, I thought Deb said --

19 MR. BEHRE: Well, then, you should phrase
20 the question that way. It's an inappropriate
21 question the way you phrased it.

22 BY MR. GIUFFRA: (Continuing)

1 Q Did Deb say to you that she believed that
2 if he was going to tear up a note he would have
3 thrown it into the garbage or into his burn bag?

4 A Deb said that and said that Lisa had --
5 had made a similar comment.

6 Q And, what did Deborah tell you about what
7 Lisa Foster said about the discovery of the note?

8 A My only clear recollection is that Deborah
9 said that she and Lisa, not necessarily exchanging
10 viewpoints but that she and Lisa both felt on their
11 own that that was unlikely that he would do such a
12 thing.

13 Q Meaning that he would leave a torn up note
14 in his briefcase?

15 A Right.

16 Q And, did they say why they believed that
17 it was unlikely that Mr. Foster would leave a torn up
18 note in his briefcase?

19 A Deborah offered that he would have more
20 likely torn it up and thrown it away in the trash and
21 that she felt Lisa had said as much as well.

22 Q Do you have something more you might want

1 to add?

2 A No.

3 Q Did anyone else express the view expressed
4 by Ms. Gorham and Mrs. Foster with regard to whether
5 the note would have been torn up and left in the
6 briefcase to you?

7 A No. And, only Deborah relayed what Mrs.
8 Foster had said to her. I didn't hear her say that.

9 Q When the First Lady arrived at the
10 Counsel's suite following the discovery of the note,
11 how did she appear to you?

12 A Very subdued, not at all her normal self
13 or how we perceived her normal self to be, which was
14 always gracious.

15 Q Do you recall any discussion -- strike
16 that.

17 Do you know whether Mr. Foster maintained
18 a diary while he was Deputy White House Counsel?

19 A I don't.

20 Q Did Ms. Gorham ever indicate to you that
21 she believed that documents were missing from Mr.
22 Foster's office after his death?

1 A I believe you asked me that already. And,
2 I think I said that she never said that to me.

3 Q Did anyone else indicate to you that they
4 believed documents were missing from Mr. Foster's
5 office following his death?

6 A No.

7 Q Do you have any understanding that
8 documents were missing from Mr. Foster's office
9 following his death?

10 A Are you referring to the files that were
11 moved that we are aware of or --

12 Q Or any other files?

13 A No.

14 Q In the period after Mr. Foster's death, do
15 you recall any discussion of Whitewater?

16 A No. I never heard the word.

17 Q Any discussion of this real estate matter?

18 A Not -- I don't believe I heard that again
19 either.

20 Q Do you recall any discussion of the fact
21 that there were papers relating to the Clinton's
22 finances in --

1 A Yes.

2 Q -- Mr. Foster's office?

3 A Yes.

4 Q And, when do you recall that -- those
5 discussions?

6 A I think early on. But, I believe that was
7 what I was told.

8 Q Okay, by Mr. Nussbaum?

9 A No, by Deborah.

10 Q Oh, by Deborah? And, what was the context
11 in which Deborah advised you of the fact that there
12 were papers relating to the Clinton's personal legal
13 --

14 A Well, that's how it was explained as to
15 what was being moved to the residence --

16 Q Oh.

17 A -- to go to the President's personal
18 attorney and to Mr. Foster's personal attorney, that
19 they were personal legal papers pertaining to the
20 President and the First Lady.

21 MR. GIUFFRA: I don't have any further
22 questions. And, I want to thank you for your help.

1 MR. COLE: Why don't we go off the record
2 for a moment and discussing timing and logistics and
3 see what we can do in the time that we have left?

4 MR. BEHRE: Okay.

5 (An off-the-record discussion ensued.)

6 RECROSS EXAMINATION

7 BY MR. COLE:

8 Q Ms. Tripp, as previously indicated, my
9 name is Lance Cole. And, I am counsel to the
10 Democratic members of the Committee.

11 What I would like to do is ask you some
12 questions about the same general subject matter that
13 you've already covered with Mr. Giuffra. In asking
14 my questions, it will be necessary for me to either
15 give you my understanding of your previous testimony
16 or repeat what I understood you to say.

17 If, in any instance, I don't accurately
18 repeat or state an understanding of what you have
19 testified to, please tell me so the record will be
20 clear on that point. Is that agreeable with you?

21 A Yes.

22 Q If I could direct your attention back to

130

1 the evening of July 20th, 1993, the evening in which
2 Mr. Foster committed suicide, I believe you testified
3 that you received a call at about midnight from
4 Deborah Coyle; is that correct?

5 A That's correct.

6 Q What do you recall Ms. Coyle telling you
7 about Mr. Foster's death?

8 A That he had committed suicide.

9 Q So, your clear recollection is that she
10 did say that it had been a suicide?

11 A Yes.

12 Q And, you never had any -- as far as you
13 knew from that point forward, it was a suicide?

14 A It was presented to me as a suicide.

15 Q And, that was by Mrs. Coyle?

16 A Yes.

17 Q Did she tell you what the source of her
18 information was?

19 A She was calling from her office. I didn't
20 ask her what the source of her information was.

21 Q Thank you. Moving forward, then, to the
22 morning of the 21st when you came into the office, I

1 believe you testified that Ms. Pond was already there
2 and the outer doors to the suite had been unlocked.

3 A Yes.

4 Q And, you came in. Is it your
5 recollection, then, that shortly after you entered
6 the suite, Ms. Pond spoke to you and said, "Don't go
7 in there," and "there" meaning Mr. Foster's office?

8 A It was actually as I came through the
9 door.

10 Q So, as you came through the door, she told
11 you, "Don't go in there?"

12 A It was a very loud, very strident
13 directive as I came in the door.

14 Q And, then, did Ms. Pond say something
15 further to you about Mr. Nussbaum? I believe your
16 term was "strict instructions not to go into the
17 office," of Mr. Foster, I'm sorry.

18 A Yes, that she had had strict instructions
19 from Bernie that no one was to enter Mr. Foster's
20 office.

21 Q Did she say anything further about the
22 instructions that Mr. Nussbaum had given her?

1 A In what regard?

2 Q The instructions regarding not going into
3 Mr. Foster's office?

4 A I don't understand the question.

5 Q For example, did she say when Mr. Nussbaum
6 had told her that?

7 A Oh, that morning, I believe.

8 Q And, why do you believe that?

9 A I'm quite certain the telephone call was
10 either in progress as I was coming in or had just
11 ended.

12 Q And, when you say "the telephone call," do
13 you mean a telephone call between Ms. Pond and Mr.
14 Nussbaum?

15 A I do.

16 Q So, your impression, as you entered the
17 office, was that either Ms. Pond was speaking with
18 Mr. Nussbaum or had just finished speaking with Mr.
19 Nussbaum?

20 A That is what she said to me.

21 Q She said that to you?

22 A Yes.

1 Q And, she said that Mr. Nussbaum had told
2 her that no one should go into Mr. Foster's office?

3 A Right.

4 Q Did she do anything further at that time
5 regarding, for example, closing the door to Mr.
6 Foster's office?

7 A I don't recall.

8 Q How long after you arrived was it before
9 someone else arrived in the Counsel's Office that
10 morning?

11 A I don't recall that either. I know that
12 at one point early on there were many people.

13 And, we closed the outer doors to the
14 suite for a little privacy.

15 Q And, do you recall who those persons were
16 that were in the suite at that time?

17 A Outside the suite, you mean?

18 Q Yes.

19 A Yes, I do recall some. I don't recall
20 all.

21 Q I'm sorry. I believe I misunderstood you.
22 The people were outside the suite and you closed the

1 door for privacy because there were people outside?

2 A Right, milling about, crying.

3 Q I'm sorry. I misunderstood you. I
4 thought you meant there were people milling about in
5 the reception area--

6 A There were some.

7 Q -- outside the suite.

8 A Some stayed. Some we closed the door on.

9 Q Mr. Giuffra asked you some questions about
10 Susan Thomases. Do you recall that here this
11 afternoon?

12 A I do.

13 Q And, I want to be sure that I understand
14 your testimony on that point. Is it your
15 recollection that Ms. Thomases called Mr. Nussbaum in
16 the day or two after Mr. Foster's death?

17 A I think my testimony was that she was a
18 frequent caller of Mr. Nussbaum's as well as a
19 frequent visitor and that -- it's difficult for me to
20 determine when she called, but I'm as certain as I
21 can be in my mind that it was during that time frame
22 as well.

1 Q Is there anything that you can recall that
2 you associate with that time period that makes you
3 believe that she called in that day or two following
4 his death?

5 A We spoke to a great many friends during
6 that time period that were all in a very emotional
7 state. And, at one point, I remember Susan being by
8 no means hysterical but affected by this.

9 The date is unclear to me. And, I -- I
10 must reiterate that all the activities during those
11 several days are rather hazy in terms of when -- not
12 what so much as when.

13 Q This is a difficult question. And, I'm
14 sure you will tell me if you can't answer it, or your
15 counsel will.

16 Do you have a recollection of whether the
17 call that you recall from Ms. Thomases was the kind
18 of call that you just described as people calling
19 either to offer condolences or support, I take it
20 from your response; or, do you recall a substantive
21 conversation that she might have had with Mr.
22 Nussbaum?

1 MR. BEHRE: I don't think the witness has
2 testified that she knows what the substance was of
3 the phone call.

4 MR. COLE: That's what I'm trying to probe
5 into, whether it was a perfunctory, "I'm so sorry to
6 hear about Vince," phone call or whether she recalls
7 Mr. Nussbaum having a more extended telephone
8 conversation with Ms. Thomases in that time period.

9 MR. BEHRE: If she knows.

10 MR. COLE: If she knows.

11 THE DEPONENT: I think I don't know.

12 BY MR. COLE: (Continuing)

13 Q And, I believe you also testified earlier,
14 if I understood you correctly, that you believe that
15 the First Lady also spoke with Ms. Thomases in that
16 period; is that correct?

17 A No, I didn't say that.

18 Q I misunderstood you, then --

19 A Right.

20 Q -- because that's what I --

21 A I would not know that.

22 Q I believe Mr. Giuffra asked you that

1 question, and I think I must have misunderstood your
2 answer.

3 A He -- I don't believe he, at any time,
4 asked me whether I knew that Susan and Hillary had
5 spoken. Did he? Did you?

6 Q I'm sorry. I may have just totally
7 misunderstood. But, there was some discussion about
8 --

9 A Well, if he did, I misunderstood the
10 question. I would not know if Hillary or if Susan
11 Thomases spoke --

12 MR. BEHRE: Now the record is clear.

13 THE DEPONENT: All right.

14 BY MR. COLE: (Continuing)

15 Q That was going to be my question, how you
16 would have known.

17 A Okay.

18 Q Do you know whether or not there was a
19 burn bag maintained in Mr. Foster's office in the
20 White House Counsel's suite?

21 A I've been asked that before. And, each
22 time I say it's my sense he did not maintain a burn

1 bag.

2 I have seen him, on many occasions, use
3 mine.

4 Q Do you recall any discussion about a burn
5 bag in Mr. Foster's office in the days shortly
6 following his death?

7 A The possibility of a burn bag came up
8 during the same time the possible retrieval of his
9 trash came up.

10 Q And, what do you recall about that
11 discussion?

12 A Just that if there were a burn bag, we
13 would be able to retrieve that burn bag, as we could
14 retrieve the trash, had it not been disposed of by
15 that time.

16 Q I'm sorry, I want to be sure I understand
17 your testimony. Are you saying there was a
18 discussion as to whether or not you could retrieve a
19 burn bag or are --

20 A No.

21 Q -- you saying there was discussion that
22 you affirmatively could retrieve a burn bag if one

1 existed?

2 A At the same time that the trash was
3 discussed, the burn bag issue was addressed. And, it
4 was addressed in such a way that it was understood
5 that if there were a burn bag in his office it could
6 be retrieved if it had not been disposed of already.

7 Q And, who were the parties to those
8 discussions?

9 A Somehow or another, I answered some
10 questions on that. I don't know whether it was in
11 answer to Cliff's questions or Steve Neuwirth's
12 questions.

13 There was an interest in getting anything
14 back from his office that had been removed.

15 Q Do you know if an effort was made to
16 recover a burn bag or materials from a burn bag?

17 A Well, I don't believe he had a burn bag,
18 so my guidance back was that I thought he didn't have
19 a burn bag.

20 Q So, your recollection is that whoever
21 asked you the question -- and you believe it perhaps
22 was someone from the Counsel's Office -- you told

140

1 them that you did not believe he had a burn bag?

2 A I think it came up again actually, and it
3 may have been with law enforcement officials. It's
4 very hazy to me who asked what and when.

5 However, my answers are less hazy. And, I
6 know that I didn't think he had a burn bag.

7 I knew if we -- I knew from the previous
8 Administration that there is an opportunity to
9 retrieve burn bags if necessary and if it's prior to
10 their disposal obviously.

11 Q Turning to the discussions that occurred
12 involving the Department of Justice representatives
13 and the review of the files in Mr. Foster's office,
14 do you recall how many individuals from the
15 Department of Justice were involved in any
16 discussions that you may have seen or overheard with
17 Mr. Nussbaum?

18 A Not definitively.

19 Q Do you know whether Mr. Nussbaum had any
20 private telephone discussions with someone at the
21 Department of Justice at that time?

22 A I recall him speaking to selected

1 individuals at the Department of Justice during that
2 time.

3 Q And, was that -- do you recall whether
4 that was before, during or after the review of the
5 files in Mr. Foster's office?

6 A I am totally unclear. I believe I placed
7 some calls for him during that time.

8 I'm less precise in my memory as to whom
9 at Justice. And, I'm totally unsure of when.

10 Q And, I think you've already told us
11 everything you can recall about your recollection
12 that someone associated with the Department of
13 Justice was more agreeable perhaps than someone else
14 about the search procedures that were being
15 discussed?

16 A That was my sense by raised voices, by
17 osmosis more than anyone telling me directly. We've
18 all worked in offices, so you must have some sense of
19 what I'm saying.

20 Q No, I'm very sympathetic to the difficulty
21 of this. And, I'm just trying to --

22 MR. GIUFFRA: You are in a tough spot.

1 THE DEPONENT: Very tough.

2 MR. COLE: It's two years ago. We realize
3 that. Whatever you can recall is helpful to us.

4 BY MR. COLE: (Continuing)

5 Q When Mr. Neuwirth discovered the torn
6 writing of Mr. Foster, you testified, I believe, that
7 your recollection is that he stuck his head out of
8 Mr. Nussbaum's office and asked you to get Mr.
9 Nussbaum; is that correct?

10 A That's my memory.

11 Q Do you have any recollection as to whether
12 immediately or shortly before that occurred that Mr.
13 Neuwirth had been in Mr. Foster's office?

14 A I don't. In fact, I didn't know at the
15 time that he was in Mr. Nussbaum's office.

16 I only knew when he stuck his head out,
17 cracked the door and turned his head this way to me.
18 And, I was in his direct line of vision in that way.

19 Q And, if I understand the configuration of
20 the White House Counsel's suite at that time, your
21 desk would be on the same wall as the door to Mr.
22 Nussbaum's office but behind Ms. Pond's desk, facing

1 -- both your and Ms. Pond's desk facing Mr. Foster's
2 office door?

3 A Yes. At that time, that's how it was.

4 Q So, you don't have any recollection of
5 seeing Mr. Neuwirth at all prior to his sticking his
6 head out?

7 A Not during that time. I was surprised, I
8 remember.

9 Q Was Ms. Pond present at the time, do you
10 recall?

11 A I only think not, because she didn't -- he
12 didn't direct it to the first desk. He directed it
13 back.

14 And, then I made the call. So, I kind of
15 think had she been there, it would have been just as
16 easy for Betsy to find Bernie.

17 Q Do you recall if anyone else was in the
18 office when that occurred?

19 A I don't.

20 Q So, you placed a call to Mr. McCarty's
21 office to find --

22 A Yes.

1 Q -- Mr. Nussbaum; is that correct?

2 A Yes.

3 Q What happened next?

4 A I don't know that I spoke to Bernie or had
5 Mac's assistant get Bernie. But, I told him to get
6 up there immediately, that there was an urgent matter
7 or something of that nature.

8 Q Who was Mac's assistant at that time?

9 A Oh, heavens, I don't even recall. I
10 didn't know them well.

11 Q My next question was going to be whether
12 you recall speaking to that person. So, I take it
13 the answer is no.

14 A I don't. They had quite a turnover in
15 that office.

16 Q And, I believe you testified that when Mr.
17 Nussbaum came back up, he went into the office and
18 closed the door --

19 A Yes.

20 Q -- to his office?

21 A Yes.

22 Q And, to the best of your knowledge, at

1 that time was there anyone in the office other than
2 Mr. Neuwirth and Mr. Nussbaum?

3 A I was just thinking that I might have
4 paged him at that time, too, and maybe he called me
5 back. I just know that he was in Mac's office and I
6 got him.

7 I am just clarifying the earlier question.

8 I don't recall that anyone else was in the
9 office. And, if they were, I wasn't aware of it.

10 Q How long were they in the office with the
11 door closed?

12 A For some time, a protracted time period.

13 Q And, did you stay at your desk during that
14 entire time period?

15 A I was in the office during that time
16 period. I was waiting with baited breath to see if
17 we finally knew what happened to Vince.

18 Q That's understandable. What happened next
19 that you recall?

20 A Well, nothing of any moment, just quite a
21 bit of activity and very little explanation offered
22 to me until I asked directly.

1 Q When you say "quite a bit of activity,"
2 did anyone leave or did others come into the office
3 during that period?

4 A I think that was the night I was asked to
5 stay late. There were a couple nights during that
6 time that I had to actually take a cab back to
7 Columbia, because I was asked to stay late.

8 And, I am aware of conversations and
9 activity concerning the release of the note.

10 Q Prior to that time, and still focusing on
11 the time immediately after Mr. Nussbaum returned to
12 the Counsel's suite, do you recall him leaving the
13 office to get anyone else?

14 A Not clearly.

15 Q Do you recall Mr. -- do you know who Bill
16 Burton is?

17 A Oh, yes.

18 Q Do you recall Mr. Burton being in the
19 suite that evening?

20 A I believe so.

21 Q What do you recall about that?

22 A Not much.

1 Q Do you recall how he came to be in the
2 suite?

3 A I think he was invited.

4 Q Do you recall by whom?

5 A I don't recall making a phone call calling
6 Bill. But, I think -- I think he came after he was
7 called.

8 I think he was expected when he arrived.
9 And, this is vague, but I'm quite certain I'm right
10 on this.

11 Q So, you don't recall Mr. Nussbaum leaving
12 and going to get him and coming back with him, then?

13 A He may have. I just don't have a clear
14 recollection of who went and when and who got whom.

15 But, there was activity, as I said
16 earlier.

17 Q And, is it your recollection, then, for a
18 period Mr. Burton joined Mr. Nussbaum and Mr.
19 Neuwirth in Mr. Nussbaum's office?

20 A It would be my testimony that there was
21 activity and people gathering in Mr. Nussbaum's
22 office. The door stayed closed.

1 I'm not clear as to who and how long.

2 Q Did the First Lady come to Mr. Nussbaum's
3 office?

4 A I don't recall if that was the day she
5 came. I do recall I only saw her once during that
6 period.

7 Q Tell us what you recall about that. And,
8 I realize you've done this once, but I would like to
9 go over it again if you would bear with me.

10 A I have absolutely no idea as to what day
11 this occurred. And, I don't even know when she
12 returned from her trip.

13 I do remember being aware that she was
14 away, I believe, during the time of the tragedy.
15 When I next saw Hillary, Mrs. Clinton, she came
16 straight into our office and straight into Bernie's
17 office. The door was shut.

18 And, I believe on her way out when she did
19 leave that she looked into Vince's office. And, I
20 don't recall if she opened the door or if the door
21 were open.

22 My sense is, though, that it was open.

1 And, she just stood there and gazed into his office
2 for some time and then left and went into her office.

3 Q And, I believe you have testified that on
4 that occasion you observed a difference in her
5 behavior or her demeanor from what you described as
6 the ordinary; is that correct?

7 A Yes.

8 Q How would you describe her behavior? I
9 should say: How would you describe her demeanor?
10 Was she upset?

11 A As opposed to her normal self?

12 Q Yes.

13 A She was normally friendly, gracious. We
14 all shared a communal ladies room.

15 She did not stand on ceremony. She took
16 the time to be gracious to all those that she came in
17 contact with up there.

18 This time, she just came in and went
19 straight into Bernie's office. There was no greeting
20 or -- and she just looked subdued.

21 She looked as one might expect someone to
22 look when they've lost a dear friend.

1 Q But, sitting here today, you can't say
2 whether that was the time, the evening, that Mr.
3 Neuwirth discovered the note or not?

4 I just want to be as clear as we can be on
5 that point.

6 A I cannot testify to that 100 percent. I
7 can't.

8 Q I'm looking at the clock, and I see it's
9 3:45. And, I know your counsel has an engagement.

10 So, I will try to wrap this up. I would
11 like to ask if you've been interviewed on this
12 subject by anyone other than your counsel or
13 representatives of the Independent Counsel?

14 And, that would include both Mr. Fiske and
15 Mr. Starr, the F.B.I. Grand Jury appearances.

16 But leaving aside, if I'm clear on that,
17 your counsel and the two Independent Counsels, have
18 you granted any interviews on this subject to anyone
19 else?

20 A Meaning the press, the White House, that
21 sort of thing?

22 Q Yes.

1 A No.

2 Q Does the word "Deep Water" mean anything
3 to you?

4 A You know, I've heard it. But, I don't
5 know if I've heard it in a song. So, I don't know
6 how to answer that.

7 Q So, you don't know if anyone has ever
8 referred to you as "Deep Water?"

9 A Good Lord. You are serious? This is a
10 question?

11 Q It's a serious question, yes.

12 A Absolutely not. And, I guess I'm shocked.

13 Q Have you ever heard of something called
14 the Center for American Values?

15 A No.

16 Q And, so you've never provided information
17 about this matter to --

18 A No.

19 MR. COLE: I'm just asking the questions.
20 I'm not implying what the answer may be.

21 But, if I don't ask the questions, I don't
22 know the answers.

1 Okay. I don't think I have anything
2 further at this time.

3 MR. GIUFFRA: I have no questions. And, I
4 really want to thank you, Ms. Tripp, for your
5 cooperation in coming back a second time.

6 And, we deeply appreciate everything
7 you've done in coming here.

8 THE DEPONENT: Thank you.

9 MR. GIUFFRA: Thank you.

10 (Whereupon, the deposition is concluded at
11 3:46 p.m., Wednesday, July 12, 1995.)

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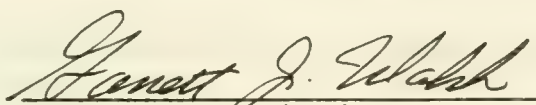
22

LINDA R. TRIPP

CERTIFICATE OF NOTARY PUBLIC & REPORTER

153

I, GARRETT J. WALSH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
Commonwealth of Virginia

My Commission Expires JANUARY 14, 1997

**DEPOSITION OF WEBSTER L. HUBBELL
IN RE: S. RES. 120**

VOLUME I

THURSDAY, JULY 13, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of WEBSTER L. HUBBELL, called for examination pursuant to notice of deposition, at 1:59 p.m. in Room 538 of the Dirksen Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
JAMES B. COMEY, Esq.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

LAURA S. SHORES, Esq.
Howrey & Simon
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402
On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|--|-------------|
| Webster L. Hubbell by Mr. Johnson | 3 |

1 PROCEEDINGS

2 Whereupon,

3 WEBSTER L. HUBBELL

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q Good afternoon, Mr. Hubbell. We've had a
9 chance to meet very briefly off the record. Let me
10 introduce myself again for the benefit of the
11 record. My name is Everett Johnson and I'm one of
12 the attorneys representing the Majority staff of the
13 special Senate committee to investigate Whitewater
14 and related matters.15 What brings us here this afternoon is
16 Senate Resolution Number 120, which creates that
17 committee and authorizes investigations into certain
18 matters related to what the public has come to know
19 as Whitewater.20 Specifically today we're inquiring into the
21 handling of the documents in Mr. Vince Foster's
22 office at or about the time of his death on July 20,

4

1 1993, so the questions that I'll ask you and the
2 questions Mr. Kravitz will ask you, if we're lucky,
3 will relate in some way to that topic.

4 A Okay.

5 Q I'm sure this is unnecessary, but let me,
6 just for the benefit of the record, ask you whether
7 you've ever been deposed before. And I don't mean in
8 connection with this matter, but just given a
9 deposition.

10 A Yes, I have.

11 Q The procedures will be very familiar to
12 you, but let me just remind both of us of a couple of
13 the more obvious ones. It's important that we not
14 speak simultaneously so that the record can be
15 maintained. It's also important that you respond to
16 questions verbally as opposed to with other forms of
17 nonverbal communication.18 I'll try and be clear in the questions.
19 I'll fail sometimes and I'll rely on you to tell me
20 when I have done so. If you need to confer with your
21 counsel or take a break at any time, just say that
22 and we will do that.

1 I take it you've had an opportunity to
2 confer with your counsel in preparation for the
3 deposition testimony here today?

4 A Yes, I have.

5 Q Was anyone present in that meeting who was
6 not either an attorney or employee of Howrey & Simon?

7 A Just Laura and myself.

8 Q And have you been contacted by the White
9 House or any representatives of the White House in
10 connection with deposition testimony today, other
11 than, of course, to inform you that it had been
12 requested?

13 A The only person I've talked to is Laura and
14 her partner, John Nields.

15 Q Could you take 30 seconds or so and just
16 tell us about your professional background, perhaps
17 beginning with your graduation from law school?

18 A I graduated from the University of
19 Arkansas, Fayetteville law school in 1973, and I
20 joined the Rose Law Firm immediately upon graduation,
21 passed the bar in September of that year, and except
22 for a period of five months when I was on the

1 Arkansas Supreme Court, I stayed with the Rose Law
2 Firm in various capacities until I came to Washington
3 on January 20, 1993.

4 Q Can you just place the year in which you
5 served on the Arkansas Supreme Court?

6 A I served on the Arkansas Supreme Court
7 beginning in late August of 1984 until January 1 of
8 1985.

9 Q And, Mr. Hubbell, what role, if any, did
10 you have in Mr. Clinton's Presidential campaign prior
11 to his election in November of 1992?

12 A Prior to the election, I had no official
13 capacity in the campaign. I was in with a group of
14 people who he initially conferred with regarding
15 whether to run. I helped in fund-raising and
16 represented and acted as the firm's liaison to the
17 campaign as campaign issues would come up regarding
18 the Rose Law Firm, as well as other issues that might
19 come up, I might be asked to advise people in the
20 campaign on certain issues. I was familiar with and
21 friends with a lot of people in the campaign, but I
22 had no official role.

1 Q And after Mr. Clinton's election in the
2 general election in November of 1992, did you have an
3 official role in the transition team?

4 A I had no official title, again, but I did
5 work pretty much full-time assisting the transition
6 and developing their ethics rules for the transition
7 and then the ethics -- the five-year ban rule that
8 was adopted by executive order in January of '93. I
9 also performed what they called vetting -- it was a
10 new word to me at the time -- of certain candidates
11 for Cabinet officers and positions within the White
12 House, and also assisted the President and First Lady
13 in transition issues from him being governor and her
14 role at the Rose Firm and coming to Washington.

15 Q I'll cover what is to everyone here,
16 probably to everyone in the world, some obvious
17 points but just to make them clear on the record.

18 When you were at the Rose Law Firm, I take
19 it you worked very closely with Mrs. Clinton; is that
20 right?

21 A Yes, we were both in the litigation section
22 together.

1 Q Did she report to you at any time?

2 A No, no. We worked on cases together, but
3 no, we never had a reporting kind of relationship.

4 Q I see. And I take it you also worked very
5 closely with Mr. Foster; is that correct?

6 A Yes, I did.

7 Q Prior to moving to Washington and beginning
8 work in the Clinton Administration in January of
9 1993, you and Mr. Clinton were close personal
10 friends?

11 A Yes, we were.

12 Q And you continue to be close personal
13 friends today?

14 A Yes.

15 Q And would the same be true of Mrs. Clinton?

16 A Yes, it would.

17 Q That's a lousy question because that might
18 be read to mean that Mr. and Mrs. Clinton are
19 personal friends. You understood that I was asking
20 about your relationship with Mr. and Mrs. Clinton?

21 A Yes, I did.

22 Q During your time at the Rose Law Firm, and

1 without revealing any attorney-client confidences,
2 Mr. Hubbell, did you have any involvement on behalf
3 of the President or the First Lady, then Mr. and
4 Mrs. Clinton, in connection with the Whitewater
5 Development Company?

6 A No, other than to answer -- assist the firm
7 in answering questions regarding Whitewater. I was
8 aware of what information was going to the campaign
9 that might have come from firm files.

10 Q That was in connection with the
11 investigations into Whitewater that took place during
12 the 1992 campaign?

13 A Right, press inquiries, yes.

14 Q Were there documents physically located in
15 the Rose Law Firm that related to Whitewater
16 Development Corporation?

17 A I think some were assembled and were housed
18 in the Rose -- at the Rose Law Firm.

19 Q Do you have any recollection today of
20 physically where within the Rose Law Firm, and I'm
21 not asking for file drawers, but in whose offices
22 they were placed?

10

1 A My recollection was that Bill Kennedy was
2 working with -- for Mrs. Clinton in trying to
3 assemble some records, and I don't know this for
4 sure, but I believe he might have had them in his
5 office.

6 Q Do you know whether or not Mrs. Clinton
7 maintained any of the records in her office at the
8 Rose Law Firm?

9 A I don't know that one way or the other.

10 Q What about Mr. Foster? Would Mr. Foster,
11 to the best of your knowledge --

12 A You're talking about Whitewater Development
13 Company?

14 Q Yes, sir. Yes, sir.

15 A Yes. I don't think so, but I may be
16 wrong. I don't believe so.

17 Q I think you said that you recall assisting
18 in the transfer of some records or documents to the
19 campaign. Am I correct about that?

20 A I'm aware that people within the firm
21 assembled certain records, specifically Bill Kennedy,
22 and I'm sure they coordinated with the campaign as

1 questions came up. And I was aware of questions
2 being asked.

3 Q I see. Did you play any role in answering
4 yourself or preparing people to answer questions that
5 may have been raised by the press and others about
6 Whitewater during the 1992 campaign?

7 A About Whitewater?

8 Q Yes, sir.

9 A I don't believe so.

10 Q Now, when I say "Whitewater," obviously
11 that's a term that can refer to the Whitewater
12 Development Corporation, but it also has broader
13 connotations to some.

14 A Right.

15 Q With respect to your last answer, did you
16 mean to exclude, for example, questions relating to
17 Madison Guaranty or to the McDougals?

18 A Yes, I did mean to exclude it, because I
19 did assist in answering questions regarding Madison
20 Development -- Madison Guaranty and Jim McDougal.

21 Q Now, as you know, Mr. Hubbell, this phase
22 of the inquiry really relates to the handling of

1 documents. I'm not prepared at this time, and maybe
2 you are less prepared than you want to be, to talk
3 about the substance of those things so I don't
4 propose to ask you about those things at this time,
5 but stating the obvious there may come a time later
6 in time that that becomes relevant.

7 A Sure.

8 Q Were you personally aware of the contents,
9 therefore, of the documents in the possession of the
10 campaign that related to Whitewater Development
11 Corporation or Madison Guaranty or the McDougals?

12 A I was somewhat familiar as it related to
13 Madison or the McDougals. I later became more
14 familiar with what had been at the campaign and at
15 the Rose firm after the election.

16 Q How did you become more familiar after the
17 election?

18 A After the election, one of the things that
19 I assisted the transition in doing would be -- was to
20 assemble records that had been compiled during the
21 campaign and make decisions about what should happen
22 to those. And some of those were files that had been

1 at the campaign and I determined whether they should
2 go.

3 So I was aware that there were files that
4 were labeled "Madison," "Whitewater," things of that
5 sort, that were in what we referred to as the Betsey
6 files, Betsey Wright's files.

7 Q Where did they go?

8 A They ended up at my house.

9 Q All of the files that you're aware of?

10 A All the files that I'm aware of, yes, of
11 the Betsey files.

12 Q I take it they're not at your house today?

13 A No, they're not.

14 Q Where did they go after your house?

15 A They came to Washington and ultimately were
16 delivered to David Kendall, the attorney for Mr. and
17 Mrs. Clinton.

18 Q What I'm trying to do, and I'm not trying
19 to be clever -- probably couldn't be -- at all. I'm
20 trying to figure out if you ever became aware that
21 any part of those assembled files were kept in the
22 possession of Mr. Foster in his White House office.

1 A I don't believe any of those files were
2 kept in his office. I was aware that Mr. Foster was
3 working on some tax returns related to Whitewater and
4 I suspected that there were files, but I don't know
5 that for sure, but I was aware he was working on some
6 tax return things.

7 Q So it wouldn't have been a surprise to you
8 to learn there was a file labeled "Whitewater" in
9 Mr. Foster's office?

10 A No, it would not.

11 Q To the best of your knowledge, did
12 Mr. Foster have any involvement in any other issues
13 relating to Whitewater or Madison or the McDougals?

14 A Mr. Foster was part of a number of lawyers
15 within the firm that helped compile certain bits and
16 pieces of information regarding Madison and the
17 McDougals during the campaign. I believe most of
18 those files were ultimately delivered to me or
19 remained at the Rose firm, so I was aware that he
20 helped assemble them. And Mr. Foster actually had
21 represented Mr. McDougal a long time ago.

22 Q Was Mr. Foster one of the people who

1 assisted in answering or preparing others to answer
2 press inquiries relating to Whitewater or Madison
3 Guaranty or the McDougals?

4 A Yes.

5 Q So, to the best of your knowledge,
6 Mr. Foster would have been a person knowledgeable
7 about those issues?

8 A Yes.

9 Q And he would also have been knowledgeable
10 about what documents the campaign had relating to
11 those issues?

12 A I don't -- there were a lot of people who
13 assembled documents during the campaign that
14 ultimately may have ended up with Betsy Wright, so I
15 don't know that he would know all of them. I know
16 that he would have known what firm files, or at least
17 known of them, because we talked about it and there
18 were some that we did turn over to the campaign and
19 some that we could not.

20 Q Because of attorney-client privilege
21 issues?

22 A Right.

1 Q When you say that and you Mr. Foster talked
2 about it, you mean as you were assembling documents
3 at the Rose Law Firm?

4 A Right.

5 Q I think as you were describing your
6 professional background you said you came to work in
7 Washington on January 20, 1993. That's the day of
8 Mr. Clinton's inauguration?

9 A Right.

10 Q Where were you employed after you came to
11 Washington?

12 A I first joined the Justice Department on
13 the 21st as an assistant to the Attorney General,
14 then became, at some point, acting Associate Attorney
15 General and was then confirmed by the Senate and
16 became Associate Attorney General, I believe, in late
17 May of 1993.

18 Q There were a couple or three titles in that
19 five-month period, and notwithstanding the evolution
20 of the title, did your job change very much or was it
21 essentially the same since you started?

22 A No, it changed because we had -- I first

1 came as an assistant to the Attorney General,
2 expecting to be an assistant to Zoe Baird, and then
3 her nomination was withdrawn and I actually played a
4 role as an assistant to Stuart Gerson until Janet
5 Reno was confirmed. At the point Janet Reno was
6 confirmed, I played a role as kind of her assistant
7 and kind of makeshift chief of staff until we started
8 getting people in place, and then I took on the role
9 of Associate Attorney General and dually took on the
10 duties of Deputy Attorney General until Phil Heymann
11 got there. When Phil got there we kind of split up
12 our duties between Deputy Attorney General and
13 Associate Attorney General. And then it became more
14 traditional after confirmation.

15 Q After your confirmation?

16 A Right, and Phil's. It was on the same day.

17 Q Now, after you were both confirmed, he as
18 Deputy Attorney General and you as Associate Attorney
19 General, did you report to Mr. Heymann or did you
20 report directly to Attorney General Reno?

21 A The chart actually showed me reporting
22 directly to Phil. Most of the time it was directly

1 to Janet Reno. We informally had my side and his
2 side, and we tried to -- we had plenty to do. We
3 didn't really go through reporting lines so to speak.

4 Q Now, Mr. Hubbell, when you were nominated
5 and later confirmed, I take it you were also vetted,
6 to use that strange word?

7 A I know that there were people who reviewed
8 my FBI reports. I don't know that I actually went
9 through a vetting like some of the other people did.

10 Q What role, if any, did Mr. Foster play in
11 your -- the review of your files or your
12 confirmation?

13 A I don't know. You'd have to ask Bernie.

14 Q By that you mean you're not aware that he
15 played any role but it's possible?

16 A It's possible.

17 Q When you say "Bernie," you mean Bernard
18 Nussbaum?

19 A Bernie Nussbaum.

20 Q So, for example, you don't know if
21 Mr. Foster ever maintained in his office any files or
22 documents relating to your nomination or

1 confirmation?

2 A Not that I know of. I don't know why he
3 would have.

4 Q Was there someone else from the White House
5 counsel's office who you do know played a role in
6 your confirmation?

7 A Well, there were people in Bill Kennedy's
8 office, there were forms that were filled out. I
9 filled out some of the vetting forms before I got
10 here, and I don't know if Jim Hamilton's people
11 reviewed those before I got here or not. And then I
12 had a confirmation team that involved people at the
13 White House and at Justice who assisted me in
14 confirmation.

15 Q Mr. Foster was not on any of those teams,
16 or any of those people that you've just described?

17 A No, no.

18 Q Could you tell us what your job duties were
19 as Associate Attorney General after your confirmation
20 in May of 1993?

21 A In general terms, I supervised what we
22 referred to commonly, although they had criminal

20

1 elements, the civil side, which would be the civil
2 division, antitrust division, tax division and civil
3 rights division and the environmental division. I
4 also supervised the immigration and naturalization
5 service, the office of legal counsel, the office of
6 information and privacy, community relations service,
7 the office of the U.S. trustees. And then Phil and I
8 had joint authority over the office of public affairs
9 and the office of policy and development and one more
10 I supervised, the office of legislative affairs.

11 Q I knew most of those existed. And
12 within -- obviously because you were such a high
13 ranking official, in one sense a large number of
14 people in the Justice Department reported to you, but
15 who reported directly to you, Mr. Hubbell?

16 A The Assistant Attorney Generals for those
17 positions or the directors for those positions, and
18 then I had my own staff that would report directly to
19 me. I'd be glad to give you the names.

20 Q Just if it's a short list, go ahead.

21 A My staff or --

22 Q Of your staff, yes.

1 A My staff, Nancy McFadden.

2 Q What was Ms. McFadden's title?

3 A I think it was Deputy Associate Attorney
4 General. I get confused because -- but I think it's
5 deputy associate. Paul Freidman was also a deputy.

6 Q Now Judge Freidman?

7 A No, that is not -- that's a different Paul
8 Freidman. Paul is still there.

9 MR. KRAVITZ: This is different from Paul
10 Fishman?

11 THE WITNESS: Yes.

12 MR. KRAVITZ: We've been talking to him a
13 lot.

14 THE WITNESS: And then Paul's wife is now a
15 district judge, but that's not the Paul Freidman
16 you're talking about.

17 John Dwyer.

18 BY MR. JOHNSON:

19 Q I'm sorry.

20 I'm sorry, what was Mr. Freidman's title?

21 A I think he was a deputy assistant. John's
22 was something else. He was younger.

1 Phyllis Coven was a Deputy Associate
2 Attorney General with primary responsibility for
3 immigration issues. Joan Silverstein was a schedule
4 C in my office.

5 Q What does that term mean, "schedule C"?

6 A There are SES -- or I think there are two
7 basic political appointees: One is an SES, senior
8 executive service; and schedule C is, I think, a
9 different level of political appointee. That's the
10 best of my understanding.

11 James Vigil, V-i-g-i-l, and I'm going to
12 have to try to remember. He was in another -- he was
13 in the civil rights division and he was detailed to
14 my office. Those are primarily who reported directly
15 to me in my office.

16 Q Now --

17 A As well as my assistants, Kathy Gallagher
18 and Jane Schreiber.

19 Q They are not attorneys?

20 A No.

21 Q Their role is more -- I don't mean this in
22 any disrespectful way. Their role is more clerical?

1 A Right, right.

2 Q Of the people you've just identified in
3 your office who reported directly to you, are all
4 them what we would think of as political appointees?

5 A Yes, except for James Vigil, who has a
6 career at Justice.

7 Q And was Ms. McFadden sort of your principal
8 deputy?

9 A She played that role. She didn't like to
10 be called that. We tried not to have lines of
11 authority, but she played a kind of jack of all
12 trades, so to speak.

13 Q She has described herself to us as sort of
14 acting from time to time as a chief of staff. Is
15 that a fair description?

16 A That would be appropriate, yes.

17 Q What responsibility, Mr. Hubbell, if any,
18 did you have as a liaison to the White House while at
19 the Justice Department?

20 A Essentially when I first got there, I was
21 the only one who had any knowledge of the people at
22 the White House, so I played for Stuart Gerson a role

1 of trying to obtain information regarding policies of
2 the White House as it might affect the Justice
3 Department. I played that same role for Ms. Reno
4 during the early days, and, because of my familiarity
5 with a lot of people at the White House, continue to
6 play that role as Associate Attorney General as
7 perhaps the one that if there was -- we needed to get
8 certain information out of the White House, Web,
9 would you make the phone call.

10 Q Did you see yourself as probably the person
11 within the Justice Department with the most
12 frequent -- strike that.

13 Were you the primary liaison between the
14 Justice Department and the White House, to the best
15 of your knowledge?

16 A Through the White House counsel, yes.

17 Q That would be Mr. Nussbaum?

18 A Yes.

19 Q Did you know Mr. Nussbaum before you both
20 began working in the Administration?

21 A No, I did not.

22 Q Mr. Hubbell, I should have asked you and

1 forgot. Who asked you to go to work in the Justice
2 Department after President Clinton's inauguration?

3 A Zoe Baird.

4 Q Did you know Ms. Baird?

5 A I did not know Ms. Baird. I met Ms. Baird
6 one time before I came to Washington. I was asked to
7 visit with Zoe and if she liked me, then I would be
8 coming to -- that would probably be the first place I
9 went.

10 Q I take it that the President and
11 Mrs. Clinton expressed an interest to you in you
12 being involved?

13 A Right. The President asked me to come to
14 Washington. At some point, he asked me to send
15 Ms. Baird my resume and what I found out later is
16 that he talked to her and asked her to interview me
17 and that if we got along, he would like me to first
18 start at the Justice Department.

19 Q When you say "first start at the Justice
20 Department," was it your understanding that you might
21 ultimately serve in different capacities in the
22 Administration?

1 A It was really up to Ms. Baird and the
2 President as to what I -- where I fit in, but they
3 thought that that would be a good fit.

4 Q At any time -- strike that. When you began
5 work at the Justice Department in Washington, did you
6 and Mr. Foster continue a close personal
7 relationship?

8 A Yes, we did.

9 Q At any time before Mr. Foster's death on
10 July 20, 1993, did he express any concern to you
11 about Whitewater Development Corporation, Madison
12 Guaranty or the McDougals?

13 A No.

14 Q So, to the best of your knowledge, at the
15 time of Mr. Foster's death that is not something that
16 he was concerned about, or at least that he had
17 expressed to you?

18 A No. He had other concerns, but it wasn't
19 Whitewater or Madison, other than I knew he was doing
20 their -- finishing up the tax returns and whatever
21 was involved in transferring the Clintons' interest
22 back to Mr. McDougal.

1 Q But he never said to you, in words or
2 substance, you know, Web, we're sitting on a time
3 bomb with this Whitewater thing or anything like
4 that?

5 A No, no.

6 Q Now, you said you knew he had other things
7 that he was concerned about, and I'll be as cautious
8 as I can not to cross over lines of privacy, but what
9 concerns relating to his job performance or his job
10 at the White House counsel with the Administration
11 did you know that he was concerned about?

12 A He was concerned about the travel office
13 matter. At the time, it seemed, overly concerned.
14 He was concerned about the upcoming Senate or
15 Congressional hearings. He had been upset about
16 the --

17 Q I'm sorry for interrupting. The
18 Congressional hearings on the travel office matter?

19 A Right. He had been told that -- he had
20 been upset about the internal audit that had been
21 done and its conclusions. He felt like that he had
22 not handled the matter as well as he should have and

28

1 on several occasions we talked about it.

2 Q At any time prior to Mr. Foster's death on
3 July 20, 1993, did the President or the First Lady
4 express to you any concerns about Whitewater
5 Development Corporation, Madison Guaranty or the
6 McDougals?

7 A I'm going to have to ask you to ask me
8 again, because did you say since they were
9 inaugurated?

10 Q Well, that might be a good way to break it
11 down. Why don't we move it back a few months and say
12 since President Clinton was elected in November of
13 1992 and up until and including the time of
14 Mr. Foster's death, did President or Mrs. Clinton
15 express to you any concerns about Whitewater, the
16 McDougals or Madison Guaranty?

17 A The only thing I heard during the election
18 to inauguration was the need to get this matter
19 finally wrapped up and closed, and that was by
20 Mrs. Clinton, that it just needed to get done, you
21 know.

22 Q What is it that needed to get done?

1 A The transfer of their interest to McDougal
2 and all the paperwork done, I'm assuming tax returns.

3 Q Did she seem in any way to you to be
4 anxious or concerned or was she just expressing it
5 was on the to do list?

6 A It was kind of like on the checklist of
7 things to get done, and one of them was certainly
8 getting that done.

9 Q Did you personally have any role in getting
10 that done?

11 A No. I was aware of it and it was on -- I
12 was in a meeting where that was put on a checklist,
13 but that wasn't one of the things that I had
14 responsibility for.

15 Q Did you have any understanding about what,
16 if any, role, Mr. Foster had in getting that done?

17 A My understanding was that, like I said
18 later, that Mr. Foster was assisting in doing the
19 returns. My understanding was somebody else was also
20 negotiating with Mr. McDougal and his lawyer to get
21 it done.

22 Q Who was that?

1 A Jim Blair.

2 Q Who was Mr. Blair?

3 A He is general counsel of Tyson Foods and a
4 personal friend of the Clintons.

5 Q And how is it that you came to know that
6 Mr. Blair was negotiating with Mr. McDougal?

7 A Somebody must have told me, but I don't
8 know who it was.

9 Q Do you think it was Mr. Foster?

10 A It may have been Mr. Foster.

11 Q Could it also have been the President or
12 Mrs. Clinton?

13 A Could have been Mrs. Clinton.

14 Q You're certain it was not the President?

15 A I'm certain it was not Mr. Clinton, or
16 President Clinton.

17 Q Did you ever have any conversations with
18 Mr. Blair on the topic of getting this done? By that
19 I'm referring to the transfer.

20 A No. I was aware during the campaign that
21 Mr. Blair was one of those people who helped or was
22 trying to assemble information regarding Whitewater

1 and getting it resolved, but I don't believe I've
2 ever talked to Jim directly about it.

3 Q Now, I think, as a point of reference, that
4 the question was really limited in time from the time
5 of the election up to and including Mr. Foster's
6 death. Let me ask you if before that time, the
7 President or Mrs. Clinton, then Mr. and Mrs. Clinton,
8 expressed to you any concerns about Whitewater
9 Development Corporation, Madison Guaranty or the
10 McDougals.

11 A Well, I'm going to have to separate the
12 answer because it's three different questions. At
13 some point I was aware that Mrs. Clinton wanted to
14 get the records assembled, figure out what had
15 happened with Whitewater and get it resolved, but I
16 believe -- I can't -- and I've been asked several
17 times. I can't remember exactly when that was, but
18 it was sometime in the late '80s. So I was aware
19 that they were trying to assemble the documents and
20 clean up the mess, so to speak. When I say "mess,"
21 the Clintons had little or no documentation of what
22 was going on or what happened. That's Whitewater.

32

1 And I was aware that happened and I was aware that
2 another partner in the firm was trying to help do
3 something in that regard.

4 Q Who was that?

5 A Allen Bird.

6 Q B-i-r-d?

7 A B-i-r-d.

8 Q I got the sense that you may have been
9 segregating Whitewater and the McDougals and
10 Madison.

11 A Right. The second thing with Madison was
12 that I was aware when the firm was doing legal work
13 for Madison back in the mid-'80s that Mrs. Clinton
14 was the billing partner for that work, so during that
15 period I would have had conversations with her
16 regarding that.

17 Q Regarding routine legal work for Madison?

18 A Right.

19 Q Did she express to you any concerns beyond
20 her concerns as an attorney representing Madison
21 relating to Madison?

22 A No, no. These were mainly legal concerns,

1 or actually a concern about terminating the
2 relationship with Madison, how that was going to be
3 done.

4 Q What about the McDougals?

5 A Individually? I don't remember any
6 concerns about the McDougals individually.

7 Q At any time prior to Mr. Foster's death on
8 July 20, 1993, did Mrs. Clinton express to you that
9 there was any information or documents relating to
10 Whitewater in the general sense, which we have sort
11 of described as Whitewater Development Corporation,
12 Madison Guaranty, the McDougals, which she desired
13 not to become public?

14 A No, no, other than I think an overall
15 concern that her private -- her personal financial
16 matters be kept private as much as they could, but it
17 wasn't Whitewater. I think I'm giving you a poor
18 answer.

19 Mrs. Clinton -- on a couple of occasions
20 there were circumstances where the firm might have to
21 make disclosure about individual partners' income and
22 things of that sort, and Ms. Clinton was sensitive to

1 the private nature of her personal income at the firm
2 and her other investments, that they not be made
3 public except what they made public as to the
4 governor's law. That's what I'm trying to say.

5 Q Prior to Mr. Foster's death on July 20,
6 1993, Mrs. Clinton never expressed to you that there
7 were any documents or information which, if they
8 became public, would evidence or be construed to
9 evidence any wrongdoing or misconduct on behalf of
10 the Clintons?

11 A No, not at all.

12 Q Mr. Foster ever express any of those
13 sentiments to you?

14 A No. I think -- I try to put it in the
15 context of more trying to find out what really
16 happened so that they could put this matter to bed.

17 Q Now, Mr. Hubbell, as may be obvious from
18 these questions, what I'm trying to ascertain is
19 whether there was any reason for anyone at the time
20 of Mr. Foster's death to believe that something in
21 the contents of his office would be damaging or
22 embarrassing if it came out.

1 A Yes.

2 Q Let me ask the same -- with that sort of
3 telegraphing of the purpose of the question, let me
4 ask the same questions, but not really limiting them
5 to Whitewater or Madison Guaranty or the McDougals.

6 Did President or Mrs. Clinton ever express
7 to you that there was any information or any
8 documents which, if it became public, would be an
9 embarrassment to them or suggest -- or be
10 misconstrued to suggest wrongdoing on their part?

11 A No, absolutely not.

12 MR. KRAVITZ: Did you mean any documents in
13 Mr. Foster's office?

14 MR. JOHNSON: Actually, I meant any
15 documents, because if there are such documents I'd
16 try and ascertain what relationship they had to
17 Mr. Foster.

18 BY MR. JOHNSON:

19 Q Which did you understand, "any documents"?

20 A I thought you were talking about in his
21 office.

22 Q I didn't assume that you knew very much

1 about the contents of his office, of the --

2 A I don't.

3 Q Let me ask the same question with respect
4 to any documents or information, and if the answer is
5 yes, we'll see what they are and whether or not they
6 relate to his office.

7 A Well, they don't relate to his office at
8 all. I mean, there were files developed during the
9 campaign where people might make allegations against
10 the President that were not truthful, but there would
11 have to be background work to determine who this
12 person is or how. That would be very personal.
13 Obviously, those records, I was involved in trying to
14 make sure that those weren't just given -- handed out
15 to the press after the campaign.

16 Not that there are any criminal -- or any
17 wrongdoing, but they are certainly personal and
18 private.

19 Q Do any of them relate to financial
20 misconduct?

21 A No, no. And I'm not saying any of it
22 relates to misconduct. I'm just saying that they're

1 private.

2 Q I didn't mean to suggest that did you. The
3 question was intended to eliminate a whole kind of
4 other --

5 A And that's why I'm -- but I didn't want to
6 say that the President and First Lady weren't
7 concerned that the campaign files that were assembled
8 be maintained in a private way.

9 Q To the best of your knowledge, none of
10 those files or none of that information would have
11 been in Mr. Foster's office or possession; is that
12 right?

13 A No, they were not in Mr. Foster's office.

14 Q Is that because they were in your office?

15 A They were in my house.

16 Q Your house. How familiar were you with the
17 contents of Mr. Foster's office?

18 A Not very much at all. I had been in
19 Vince's office, but mainly Vince was very neat so
20 most of -- he kept a pretty clean desk.

21 Q Were you surprised to learn later in time
22 that Mr. Foster had kept a torn-up piece of paper or

1 page in the bottom of his briefcase?

2 A When I found out about that, I had a
3 reaction that is still my same reaction, and that is
4 after reading it that Vince had written that note,
5 and by that time the disease was bad enough to where
6 he didn't even trust the shredders at the White
7 House, that he would have torn it up and stuck it in
8 his briefcase, meaning to throw it away at home or
9 somewhere else. That was my reaction to -- I assume
10 you're talking about a note that was found several
11 days later.

12 Q Yes, yes. And I think you've answered it,
13 but the basic gist of the question was did it strike
14 you as out of character for Mr. Foster to have kept
15 scraps of paper in his briefcase.

16 A Yes, except in hindsight, knowing what the
17 disease had done to him, I'm not surprised. By that
18 time, Vince did not trust the telephones or, I
19 suspect, didn't trust the people who picked up the
20 garbage at the White House.

21 Q Do you know that because he expressed that
22 to you?

1 A Not about the garbage. About the
2 telephones, yes.

3 Q About the telephones, he literally said to
4 you I don't trust the telephones?

5 A Yes.

6 Q Off the record.

7 (Discussion off the record.)

8 MR. JOHNSON: Carmen, could you read the
9 last question and answer, please?

10 (The reporter read the record as requested.)

11 BY MR. JOHNSON:

12 Q Mr. Hubbell, as a result of your
13 conversations with Mr. Foster, did you ever express
14 to the President or the First Lady any concerns about
15 Mr. Foster's mental health or ability to perform his
16 job at the White House?

17 A The only opportunity I would have had was
18 the night -- the Monday night before Vince died on
19 Tuesday, and I am trying to remember whether I
20 related to the President that he was down about the
21 travel office. I would have also in that same
22 conversation related about the weekend I spent with

40

1 him, a weekend that I thought he was feeling better,
2 but I don't remember whether I talked to the
3 President about Vince's health or not.

4 I do know that he called Vince that night
5 because we were all supposed to see a movie together
6 and Vince didn't. I'm trying to be as honest as I
7 can. In other words, I don't remember, but there
8 were a lot of things that's happened and I've been
9 asked a lot of questions about that night. And it's
10 certainly possible that the President could have
11 inquired that evening, did we have a good weekend,
12 how is he feeling, and I would have said he's been
13 down but we had a good weekend. So I don't want to
14 say I didn't, but I don't have any specific
15 recollection of the conversation that evening.

16 Q I think what I would like to do next is
17 turn to July 20, 1993, the day Mr. Foster took his
18 life.

19 A Yes.

20 Q Where were you on that day, Mr. Hubbell?

21 A I was at Justice. I came to the White
22 House for the announcement regarding Director Freeh.

1 I returned to Justice, worked there. Went home
2 probably about 8:00 and was having dinner with my
3 family, my wife and a friend, Marsha Scott, and I got
4 beeped and was informed of Vince's death.

5 Q Who called you regarding Mr. Foster's
6 death?

7 A George Stephanopoulos called me at the
8 restaurant. I was having dinner at a restaurant.
9 I'm sorry.

10 Q I was going to say, I missed something.

11 A I was beeped at --

12 Q At 8:00 p.m. -- you were home by 8:00 p.m.
13 and sometime after 8:00 p.m. you were having dinner
14 at a restaurant?

15 A That's right, I'm sorry. I took the kids
16 who were there and Marsha and my wife and I were all
17 in a restaurant and I got beeped. I went to a public
18 phone where George told me that Vince -- they had
19 found the body in a park and that it was Vince and it
20 was an apparent suicide and that -- I couldn't
21 believe it, and I said George, I'm in a public
22 restaurant. And he said get to a phone where we can

1 talk, and I did.

2 Q Do you have any recollection about what
3 time of evening Mr. Stephanopoulos called you?

4 A No, I really -- I mean, it was probably
5 around 8:30 to 9:00, but I could be off an hour, I
6 mean, I really could.

7 Q And so the next thing you did was what?

8 A It was, you know, like a comedy of errors.
9 We went home. I left my kids -- I gave my kids the
10 credit card and said we have to go. I have to go. I
11 said Susie, come on. Marsha went with me. The kids
12 stayed and paid the bill.

13 Q Susie and Marsha are --

14 A Susie is my wife. Marsha Scott is Marsha
15 Scott, who is a friend in Arkansas but also works in
16 the White House. I said come on, I've got to get to
17 a private phone.

18 We get in Marsha's car and I think leave my
19 car for the kids, get home and realize we're locked
20 out of the house, so I have to go around to a
21 neighbor and use their phone, and there I called
22 George back.

1 Q Mr. Stephanopoulos was at the White House?

2 A Yes.

3 Q Was he at the White House the first time he
4 called you as well?

5 A I'm assuming he was. I think they normally
6 got me back then through the Justice command center
7 where they would call the command center, the command
8 center would beep them, I would get them. They might
9 patch me into George or they might -- I'm not sure
10 exactly that night how I got back to George, but I
11 called George back. He told me that it was true,
12 that Bill Kennedy was going to identify the body.

13 Obviously I was in shock. He said that
14 David Watkins was on his way with the Park Police to
15 advise Lisa and I should get there as soon as
16 possible. I then told --

17 Q Get where as soon as possible?

18 A To Lisa's.

19 Q Meaning Mrs. Foster?

20 A Yes. I reminded George that Sheila Anthony
21 was just right -- Sheila Anthony lives almost
22 directly across the street from me, that Sheila, we

1 would need to notify Sheila as well and that she was
2 across the street. And he said he had forgotten,
3 would I go tell Sheila.

4 Q Tell us who Mrs. Anthony was.

5 A Sheila Anthony is Vince's older sister.
6 Her husband is Beryl Anthony, who was a Congressman
7 from Arkansas for about 14 years and was by that
8 time, I think, confirmed as the head of the office of
9 legislative affairs at the Justice Department.

10 Q All right. So Mr. Stephanopoulos told you
11 to proceed as quickly as you could to the Foster
12 residence?

13 A Right.

14 Q You reminded him that someone needed to
15 inform Ms. Anthony who lived across the street from
16 you?

17 A And he asked that I do so.

18 Q Did you in, either this conversation -- the
19 first conversation with Mr. Stephanopoulos or the one
20 you've just been describing ask Mr. Stephanopoulos
21 whether or not the President had been informed of
22 Mr. Foster's death?

1 A No.

2 Q Did you ask whether or not Mrs. Clinton had
3 been informed of Mr. Foster's death?

4 A No.

5 Q Is that because you assumed that they had
6 or you didn't think of it?

7 A I just assumed that they had.

8 Q All right. And what's the next thing,
9 Mr. Hubbell, you recall?

10 A I walked across the street to tell Sheila.
11 As it turned out, Vince's other sister was visiting
12 Sheila that night, Sharon. Her name is Sharon
13 Bowman. They were out in their backyard having a
14 drink, and I went out and told them I had to tell
15 them something, that I didn't know what was true or
16 what wasn't true at that point, but that I had
17 received this call that Vince had been found dead and
18 that they were verifying the body and that we were
19 going to Lisa's and the Park Police was coming to
20 Lisa's and that I thought they ought to come with me.
21 Q Why don't we -- it's a little before 3:00
22 and you've got to scoot. Why don't we stop now. Off

1 the record.

2 (Discussion off the record.)

3 (Recess.)

4 BY MR. JOHNSON:

5 Q Mr. Hubbell, I think before we broke, you
6 were telling me that you had advised Ms. Anthony and
7 Ms. Bowman of Mr. Foster's death and also asked them
8 to go, I believe, with you to the Foster residence
9 sometime in the evening of July 20, 1993. I think
10 you also told me that you don't have a clear picture
11 of what time of evening that may have been.

12 A No, I don't.

13 Q What's the next thing that you recall
14 doing?

15 A We drove to the Foster residence and got
16 there just at the same time that David Watkins and
17 Eileen got there, Eileen Watkins, and the Park
18 Police.

19 Q Other than Mr. Foster's immediate family,
20 was anyone else already there?

21 A No, no. I think it was just Laura Foster
22 and Lisa when we got there.

1 Q Had Mrs. Foster already been informed of
2 Mr. Foster's death?

3 A No.

4 Q Did you do that?

5 A No, I asked if I could and the Park
6 Police -- the guy said that he needed to be the one
7 to advise Lisa. We got there just all about the same
8 time and he said he's the one who had to do it. He
9 went in first and we were right behind him.

10 Q Did you and Mr. Watkins remain outside of
11 the Foster residence together while the Park Police
12 informed Mrs. Foster?

13 A We were right at the door, yes.

14 Q What, if anything, did you and Mr. Watkins
15 discuss at that time, if you recall?

16 A I think we were in shock. I don't know
17 that we said anything, other than I can't believe it,
18 or things of that sort. I think we were still in
19 shock.

20 Q Do you recall the names of the Park Police
21 officers who were there?

22 A No, I do not.

1 Q Did Mr. Watkins say or indicate to you at
2 that time, or at any time on that evening, that
3 anyone from the Park Police had requested
4 Mr. Foster's office be sealed or secured at the White
5 House?

6 A The Park Police?

7 Q Yes.

8 A No.

9 Q Did Mr. Watkins say that anyone, the Park
10 Police or any other person, had requested that the
11 office be sealed?

12 A No, I don't believe Mr. Watkins told me
13 that. I've been told that I told Mr. Watkins that.

14 Q Well, that's a surprise to me. We'll take
15 you through that. Who told you that you told
16 Mr. Watkins that?

17 A This issue came up when I was being
18 interviewed by the special counsel, and it may have
19 been Mr. Watkins or it may have been Mr. McLarty, but
20 I was told by two people that I told either Mack or
21 David -- they remember me saying make sure you lock
22 up or seal the office tonight.

1 MR. KRAVITZ: Can we go off the record?

2 MR. JOHNSON: Sure.

3 (Discussion off the record.)

4 BY MR. JOHNSON:

5 Q Let me just go a little bit slowly,
6 Mr. Hubbell, through what you just said. I take it
7 that you don't personally recall, as you sit here
8 today, telling Mr. Watkins or anyone else on the
9 evening of the 20th that Mr. Foster's office has been
10 sealed?

11 A No.

12 Q But you have indicated that there are
13 others who do recall that perhaps you said that and
14 who have informed you of that; is that correct?

15 A That's correct.

16 Q Tell me, to the best of your recollection,
17 what those others have informed you about what they
18 recall.

19 A They told me that I told, and they couldn't
20 remember whether it was David or Mack McLarty, that
21 the office should be sealed.

22 Q And who is it that has indicated to you

50

1 that they recall your giving that instruction on the
2 evening of the 20th?

3 A Marsha Scott and my wife.

4 Q Did Ms. Scott accompany you to the Foster
5 residence that evening?

6 A I don't know. I mean, if she wasn't in the
7 car with us, she was right behind us.

8 Q So whether or not she rode there with you,
9 she was there?

10 A She was there pretty quickly thereafter. I
11 just -- we went to dinner together, we were there.
12 She walked across the street when we told -- she may
13 have driven Sheila and Sharon, for example, and
14 Susie, my wife, and I went in another car. I just
15 don't remember who was in which car.

16 Q What do you recall about what Mrs. Scott
17 said to you about your conversation with Mr. Watkins?

18 A She just said that she had recalled that I
19 had said that.

20 Q The "that" being that Mr. Foster's --

21 A That the office should be either locked or
22 sealed, yes.

1 Q And just -- there are a number of
2 possibilities here, so let me just be as clear as I
3 can. In Mrs. Marsha Scott's statement to you, did
4 she indicate whether or not she thought you made that
5 statement to Mr. Watkins or to Mr. McLarty?

6 A She didn't recall. It was one or the other
7 or both.

8 Q She thought it was one or the other or
9 both?

10 A Right.

11 Q What about your wife's recollection of that
12 statement, what did your wife tell you that she
13 recalled?

14 A She says that she recalls me saying it to
15 Mack.

16 Q So Mr. McLarty?

17 A Right.

18 Q So Ms. Scott has informed you that she
19 recalls your saying it, but can't be clear whether it
20 was to Mr. McLarty, Mr. Watkins or both. Have I got
21 that right?

22 A Right.

1 Q And your wife has a recollection of your
2 making that statement, but her recollection is that
3 it was made to Mr. McLarty?

4 A That's what she's told me.

5 Q The statements that you have just described
6 by Ms. Scott and your wife, when were they made to
7 you?

8 A About reminding me that I said this?

9 Q Yes, sir.

10 A I guess it's been in the last about three
11 or four months ago.

12 Q And is this in a conversation involving all
13 three of you, Ms. Scott, your wife and yourself, or
14 were they in separate conversations?

15 A It's been both.

16 Q Is this something you've all talked about,
17 I take it?

18 A Yes.

19 Q And I take it you don't today disagree with
20 their recollections?

21 A I just don't have a recollection. I have a
22 recollection later on of another conversation I had,

1 but I just don't have any recollection of that
2 conversation.

3 Q Have you ever discussed with Mr. Watkins
4 whether or not he has any recollection of that
5 conversation between you and he?

6 A No, I have not.

7 Q Do you have any recollection of any
8 conversations between anyone and the Park Police who
9 were present at Mr. Foster's residence that evening
10 on the topic of sealing Mr. Foster's office?

11 A No, I do not.

12 Q So the first recollection you have,
13 independent of what your wife and Ms. Scott have
14 suggested to you, is sometime during the morning of
15 the 21st?

16 A Right.

17 Q Mr. Hubbell, I think before I went on that
18 little detour, you were telling me about the Park
19 Police --

20 A I'm sorry about that.

21 Q No, no, that's good. That the Park Police
22 went in to inform Mrs. Foster of Mr. Foster's death

1 and that you and Mr. Watkins followed shortly behind
2 them?

3 A Right.

4 Q What's the next thing you recall?

5 A I remember Lisa screaming.

6 Q And feel free to exclude from your
7 responses to my questions -- strike that, Carmen.

8 It's not necessary for us to describe the
9 high emotional content of that evening, just because
10 of the pain I know it causes you and it's not at the
11 center of what we're inquiring about.

12 Other than the obvious pain and despair
13 caused by news of that kind, what's the next thing
14 that you recall happening?

15 A Well, if you know their house, Lisa was on
16 the steps and she sat down and was upset, obviously,
17 and ultimately went back upstairs and people started
18 coming. I recall that after a few minutes, somebody
19 asked me to go up and be with Lisa and talk to her,
20 and I did do that.

21 Q Who started coming shortly after
22 Mrs. Foster was informed?

1 A Well, I don't remember if Eileen was
2 there.
3 Q For the record, who is Eileen?
4 A Eileen Watkins is Dave Watkins's wife.
5 Pretty shortly thereafter Barbara Pryor and Senator
6 David Pryor arrived.
7 Q Did Senator or Mrs. Pryor indicate how they
8 had learned of Mr. Foster's death?
9 A I don't know. We were looking for Beryl
10 Anthony. He was not at home with Sharon and Sheila.
11 I think he was somewhere else. And we were looking
12 for the children.
13 Q Mr. Foster's children?
14 A Mr. Foster's two sons. You know, the
15 phones started ringing.
16 Q I understand.
17 A We were trying to get a doctor. Senator
18 Pryor got their family physician there. Mr. Kennedy
19 arrived at some point.
20 Q William Kennedy?
21 A Yes.
22 Q Was Mr. Kennedy alone or was he accompanied

1 by someone?
2 A He had an assistant in his office who was
3 there. I don't think he ever came in, but he was out
4 in Bill's car. The traffic got pretty bad. It's a
5 real small street. And I had to go out to the car a
6 lot to use the telephone, so I think this guy, I
7 think his name is Davenport --
8 Q Perhaps Livingstone?
9 A Livingstone, correct. Livingstone stayed
10 out and I think it was Bill's car, but Craig was
11 driving it or it could have been Craig's car. But it
12 had a phone and we needed as many phones as we could
13 get.
14 Mack McLarty and Donna McLarty ultimately
15 arrived. Mickey Kantor arrived. I can't -- I mean,
16 I know a lot of other people but -- ultimately, the
17 President arrived.
18 Q Did Mr. Nussbaum arrive?
19 A I don't remember if Bernie came to the
20 house that evening or not.
21 Q Did Patsy Thomasson arrive?
22 A I don't ever remember Patsy arriving. She

1 could have. I mean, I just don't remember.

2 Q Just to try and place in time these events,
3 how much time had elapsed between when you arrived
4 and when you recall that the President arrived?

5 A I would have thought it was a couple of
6 hours, but it might have been shorter. I just don't
7 know.

8 Q Now, you indicated that you had to go out
9 to Mr. Kennedy's car, I assume, and place some
10 telephone calls; is that right?

11 A That's right.

12 Q Who do you recall calling on that evening?

13 A There was a phone in the kitchen that we
14 were using. David had his mobile phone. I think I
15 had my mobile phone, but the batteries wore down
16 pretty quickly. That's why I was going out to the
17 car. And it mainly was responding to calls that were
18 coming in from Arkansas. It hit the news pretty
19 quickly that Vince had committed suicide and so the
20 phone started ringing off the wall. A lot of the
21 people that couldn't speak to Lisa said let me speak
22 to Web and find out what's going on.

1 I know that I talked to Jim Hamilton that
2 evening, who is a lawyer. I called Jim.

3 Q What was your purpose in calling
4 Mr. Hamilton?

5 A I was new to Washington and did not know
6 what it would involve in getting Vince home.

7 Q By "home" you mean home to Arkansas?

8 A Home to Arkansas, and I knew Jim and asked
9 him to act as counsel and help the family in getting
10 that done. And I obviously called the funeral home
11 that we knew of in Arkansas. I know that I talked to
12 several of the Rose firm partners who called,
13 specifically Phil Carol I remember. I'm sure I
14 talked to others. A lot of Vince's friends called.
15 They're all mutual friends. I don't -- I really
16 don't -- I know I talked to Lisa's Catholic priest
17 that night, and she did. There were a lot of
18 arrangement-type phone calls that I was starting to
19 make.

20 Q By "arrangement," do you mean arrangements
21 relating to Mr. Foster's funeral?

22 A Yeah. And people were wanting to come --

1 you know, they would call and say well, I'm going to
2 get on a plane tomorrow. How long are you going to
3 be there. All of that was happening all at once, and
4 I kind of by default had that role of getting all
5 that done.

6 (Mr. Ben-Veniste entered the room.)

7 BY MR. JOHNSON:

8 Q Do you think you spoke with the First Lady
9 on the telephone that evening while at Mr. Foster's
10 home?

11 A I've been asked that. I don't remember.

12 Q When is the first time that you do remember
13 speaking with the First Lady about Mr. Foster's
14 death?

15 A I know that I talked to her as soon as I
16 arrived in Arkansas.

17 Q Which is when?

18 A That was, I guess, two days later, we flew
19 with the body, and then I went and dropped my wife
20 off and phoned the First Lady. But I cannot believe
21 that I didn't talk to her on the phone prior to that,
22 but I just don't have any recollection of it.

1 Q While at the Foster residence that evening,
2 did you speak with anyone in the White House? By "in
3 the White House" for purposes of this question, I
4 mean physically at the White House, for example,
5 Mr. Stephanopoulos or others.

6 A I know I would have talked to Bill Burton,
7 who was Mack McLarty's chief aide, or the one I knew
8 the best. He had actually clerked at the Rose firm
9 before he got his law license and moved to Texas.

10 Q What was your purpose of calling
11 Mr. Burton?

12 A Bill was kind of the person who I was
13 talking to at the White House who was kind of -- Mack
14 had put in charge at the White House for him. And I
15 remember talking to Bill that next morning, but I'm
16 sure I talked to him that night. I just don't know.
17 At some point I was trying to get, but I don't know
18 if I was doing this by phone or in person, I was
19 hoping to keep the White House from announcing that
20 Vince had committed suicide.

21 Q Why was that?

22 A Lisa is Catholic and she was concerned that

1 if it was announced that he had committed suicide,
2 then he couldn't be buried in a Catholic church.

3 Q And --

4 A And, you know, it was still hard to
5 believe.

6 Q In your conversations with Mr. Burton that
7 evening, did you discuss with him at any time whether
8 or not it would be appropriate to look for a suicide
9 note?

10 A I talked to somebody. It would have been
11 either Bill or Bernie, but I don't remember who. I
12 would have said was there any kind of note.

13 Q Now, do you have a specific recollection of
14 speaking to Mr. Nussbaum on the telephone on the
15 evening of the 20th?

16 A I don't.

17 Q When you said it would have been either
18 Bill or Bernie, you're suggesting it's possible you
19 spoke with Mr. Nussbaum but you don't specifically
20 recall?

21 A Yeah. And I told you I don't know if
22 Bernie came to the house that night. It's kind of --

1 it's hard to believe that I wouldn't have talked to
2 Bernie about it, but it's possible that I did not.

3 Q But either in a conversation with
4 Mr. Burton or Mr. Nussbaum, you asked whether a note
5 had been found; is that correct?

6 A Right.

7 Q What do you recall about the answer?

8 A The answer was no.

9 Q In conveying that answer no, did anyone
10 suggest to you one way or the other whether or not
11 they had been in Mr. Foster's office in the White
12 House counsel's suite?

13 A I have some -- because of that
14 conversation, I have some indication that somebody at
15 least looked in the door or looked on his desk to see
16 if there was a note.

17 Q You just don't specifically recall one way
18 or the other whether it was Mr. Burton or
19 Mr. Nussbaum who conveyed that information to you?

20 A No, no.

21 Q Do you recall who it was that you had
22 indication had gone into Mr. Foster's office?

1 A No. I would assume that it would have been
2 Bernie, but I don't know.

3 Q Have you ever discussed with Mr. Nussbaum
4 personally whether or not he went into Mr. Foster's
5 office on that evening?

6 A No.

7 Q Even as we sit here today?

8 A Even as we sit here today.

9 Q I should have asked you earlier and just
10 forgot whether you have ever discussed with
11 Mr. McLarty your wife's and Marsha Scott's
12 recollection that you may have discussed with him the
13 sealing or locking of Mr. Foster's office on the
14 between of the 20th.

15 A No, I have not. Primarily because it has
16 just been recently that they told me I had talked to
17 Mack about it, and I haven't talked to Mack since my
18 guilty plea.

19 Q Which was approximately two weeks ago; is
20 that correct?

21 A No, no, that was my sentencing. My guilty
22 plea was in December of '94.

1 Q You haven't spoken with Mr. McLarty since
2 that time?

3 A No, I have not.

4 Q Other than the one conversation with either
5 Mr. Nussbaum or Mr. Burton on the topic of a suicide
6 note, did you discuss with anyone else on the evening
7 of the 20th or early morning hours of the 21st
8 whether or not a suicide note had been found?

9 A I had looked for a note in the Foster
10 residence that evening, along with Mrs. Foster, and
11 did not find any. And I'm confident that just about
12 everybody recalls you heard on TV -- that heard on
13 TV -- everybody who would call would ask me, they
14 heard on TV it was a suicide and asked me if there
15 was a note and I said no, we haven't found any.

16 Q Other than the conversation you described
17 with Mr. Burton or Mr. Nussbaum, did you discuss with
18 anyone else whether or not a note was found in
19 Mr. Foster's office? Were there any further
20 discussions that you recall relating to the contents
21 of Mr. Foster's office on that evening?

22 A No, no.

1 Q Did you speak personally with the President
2 when he arrived at the Foster home?

3 A I'm sure I did.

4 Q Other than, again, excluding quite
5 understandable expressions of grief, do you remember
6 anything else about your conversation with the
7 President?

8 A I'm sure that we would have discussed the
9 fact that I had been with Vince the entire weekend
10 before and how it was so inconsistent with my weekend
11 and how in shock we were, so I mean it was more of
12 just pure grief and shock.

13 Q While we're still on the evening of the
14 20th and early morning hours of the 21st, let me show
15 you what we have been told may be your cellular phone
16 records for those days. Let me just ask you a
17 preliminary --

18 A Good.

19 Q Preliminarily, have you ever seen them
20 before?

21 A No, I have not.

22 Q We'll learn together, then. Let me just

1 state for the record I'm showing Mr. Hubbell
2 documents identified as P000108, 109 and 110, which
3 have been provided to us by the Justice Department
4 and which we believe, Mr. Hubbell, are the records of
5 telephone calls made on your cell phone. Take a look
6 at those. Counsel, I'm sorry I only have one copy.
7 Take a look at those and first of all tell me whether
8 we're right about what this document is.

9 A These are phone numbers I would have called
10 on this first page, so it's likely that it's mine.
11 This one is mine. This is 7/20. These are all 7/21.

12 (Mr. Ben-Veniste left the room.)

13 (Witness reviewed the document.)

14 THE WITNESS: I have no reason to doubt
15 it. I recognize the calls on the first page, I mean
16 the phone numbers, but -- and I'd be happy to try to
17 go through and identify those, but they look like it,
18 if that's on the same phone.

19 BY MR. JOHNSON:

20 Q You've indicated earlier that you made
21 calls other than on your own cellular phone on that
22 evening?

1 A Right. People might have used my phone as
2 well. It wasn't like I've got my phone, you can't
3 use it, Mack, or Mack or David, you can't -- we
4 were -- just whoever needed a cell phone was given a
5 cell phone.

6 Q Why don't I focus -- unfortunately --
7 strike that, Carmen.

8 Unfortunately, the phone bills don't
9 indicate, as I read them -- strike that, too.

10 As I review these bills, they indicate to
11 me that no telephone calls were made on your cell
12 phone on the evening -- or at all on the 20th of
13 July; is that correct?

14 A That's what it looks like, which would mean
15 I didn't have my cell phone with me that evening.

16 Q When we get to the 21st maybe we'll come
17 back to some of the calls made on the 21st. For my
18 own memory I would like to stay with the 20th for the
19 time being.

20 How long did you remain at the Foster
21 residence that evening?

22 A Probably until 2:00 or 3:00 in the morning.

1 Q And other than the people that you've
2 previously identified, do you recall anyone else
3 coming to the Foster residence that evening?

4 A It's hard, because you know, we -- the next
5 day we went back to the Foster residence after I was
6 there to stay the day and evening, to identify who
7 was there one day as opposed to the other. And I'm
8 sure, I remember David Gergen coming with the
9 President, but I don't know if it was the first night
10 or the second night.

11 There were several people in the White
12 House counsel's office, such as Steve Neuwirth and
13 Cheryl Mills, but I don't think they came. I would
14 believe -- I'm just -- I know in my heart of hearts
15 know that Bruce Lindsey was there, but I can't -- I
16 don't remember it exactly, but I'm sure he did. See,
17 the President came both nights so that's why it's
18 also confusing.

19 Q I understand. When you say Mr. Gergen came
20 with the President, you're just not sure whether that
21 was on the 20th or 21st?

22 A Right. And for some reason I think it was

1 the next night, but I'm not sure, because the second
2 evening the President left and went next door to
3 Senator -- who's the other Senator from Alabama?
4 Shelby lives next door to where Vince did, so he went
5 over there at some time the next night. And I think
6 Gergen had suggested he do that, so I don't -- that's
7 why I think Gergen was there the second night.

8 But on that night, I'm trying of think of
9 who else was there. Like I said, Beryl eventually
10 showed, the children showed. There would have been
11 some friends of Sheila's that had gotten there. I
12 think a lady named Sidney Probst, P-r-o-b-s-t.

13 Q Feel free to confine your answer to White
14 House employees. I didn't say that, but it's
15 occurring to me as you speak there were a lot of
16 people there.

17 A Let me see, anybody else that I can think
18 of. I don't remember anybody. I certainly don't.

19 Q Now, you've indicated that you yourself
20 searched for a suicide note at the Foster home that
21 evening. Did the Park Police ask you to do that?

22 A I don't remember whether they did or not.

1 They might have. The only thing I remember talking
2 to the Park Police about was was it necessary for
3 them to stay and them telling me -- at least I
4 remember only one, but I've seen the hearings and
5 apparently there were two. But I remember at one
6 point saying, you know, she's not in any state. Do
7 you need to stay, and him saying yes, we'd like, if
8 at all possible, to talk to her, and ultimately she
9 did talk to him briefly and then at some point him
10 leaving. And I'm sure that I had some conversation
11 with him, but I don't -- I think it was Lisa and I
12 who decided to look for a note. I don't know. I
13 just don't know.

14 Q And since we -- I sense we may be nearing
15 an end to your recollections on the evening of the
16 20th at the Foster home. But let me ask you one more
17 time. In your much later discussions with your wife
18 and Ms. Scott about their recollections that you
19 requested either Mr. Watkins or Mr. McLarty to cause
20 Mr. Foster's office to be sealed, did they indicate
21 to you that they recalled anything about
22 Mr. Watkins's or Mr. McLarty's response to that

1 request?

2 A No.

3 Q So the only thing they said that they
4 remembered is that you asked?

5 A Yes.

6 Q Do you remember anything else -- strike
7 that.

8 You stayed at the Foster home until about
9 2:00 or 3:00 in the morning I think you said?

10 A Right.

11 Q When you left, Mr. Hubbell, who left with
12 you?

13 A My wife.

14 Q Where did you go?

15 A We went home.

16 Q What's the next thing -- when you went home
17 that evening, did you place any calls to the White
18 House?

19 A Oh, no, no.

20 Q And the only call you remember placing to
21 the White House from the Foster residence is the one
22 in which you spoke with Mr. Burton and perhaps

1 Mr. Nussbaum?

2 A Yeah, but I certainly could have made other
3 phone calls to the White House. I just don't
4 remember now.

5 Q What's the next thing that you did in
6 connection with Mr. Foster's death?

7 A I woke up -- I didn't sleep very well, as
8 you can imagine, and I woke up and called Bill Burton
9 that next morning, asked him to make sure that the
10 office was locked.

11 Q By "the office" you mean Mr. Foster's
12 office?

13 A Correct.

14 Q Approximately what time did you place that
15 telephone call to Mr. Burton?

16 A I think it's between 7:00 or 8:00 in the
17 morning.

18 Q Did you call him at home or in the White
19 House?

20 A At the White House, so that's why it's
21 probably closer to 8:00.

22 Q You're just estimating on what time he

1 should have arrived at the White House that morning?

2 A Yeah, right.

3 Q As specifically as you can recall, can you
4 just describe that conversation to us?

5 A I had in the middle of the night, one of
6 the things that kept me awake is saying we ought to
7 make sure Vince's office is locked.

8 Q Why did you think that, Mr. Hubbell?

9 A Just gut instinct that let's not have any
10 issue about what we all have issues about, what we're
11 having issues about, so I called Bill that next
12 morning and said make sure the office is locked. I
13 mean -- and I didn't have any jurisdiction to do
14 that. It's just being a friend.

15 Q And just to be a little clearer about what
16 it is we have issues about, was it your instinct that
17 it would be appropriate to take steps to protect the
18 integrity of the contents of Mr. Foster's office?

19 A I just wanted to make sure that before
20 anybody started going in the office, that, you know,
21 it had been properly documented what was there and
22 things of that sort, that it be handled in a

1 professional way.

2 Q You didn't want anybody taking anything in
3 or removing anything that hadn't been there at the
4 time of Mr. Foster's death?

5 A Unless it was documented, yeah.

6 Q I'm sorry. I interrupted you. You said
7 that occurred to you as you slept fitfully or tried
8 to sleep that evening.

9 A Right.

10 Q And then you called Mr. Burton sometime,
11 you think, before 8:00 a.m.?

12 A Right.

13 Q On the morning of the 21st, okay.

14 A Right.

15 Q And did you ask him or direct him to seal
16 Mr. Foster's office at that time?

17 A I asked him to make sure that the office
18 had been locked and he told me Mack had already made
19 sure that had happened.

20 Q Did he indicate when Mr. McLarty had made
21 sure that happened?

22 A No. I had the impression from that

1 conversation that it had happened the evening before.

2 Q Do you remember anything else about your
3 telephone conversation with Mr. Burton?

4 A No.

5 Q Did he indicate to you at that time whether
6 or not anyone had been in Mr. Foster's office the
7 evening of the 20th?

8 A No.

9 Q Did you and Mr. Burton discuss why you felt
10 it was appropriate for Mr. Foster's office to be
11 locked or sealed?

12 A No.

13 Q Is that because you think you both just had
14 the same understanding about it?

15 A Yeah, I think it's obvious.

16 Q What's the next thing that you recall?

17 A My wife and I got up and went to the Foster
18 residence, and shortly thereafter I went to the White
19 House.

20 Q Approximately what time do you think you
21 arrived at the Foster residence that morning?

22 A It wouldn't have been early because

1 everybody had been exhausted, so I would say close to
2 9:30 to 10:00.

3 Q Other than Mr. Foster's immediate family,
4 were there any government officials or White House
5 employees there?

6 A No, not that I recall. We had had an issue
7 about that, but I don't remember seeing anybody
8 there.

9 Q What do you mean, you had had an issue?

10 A The evening before, I was concerned that
11 the next morning a bunch of press would be at the
12 residence, and I had asked somebody to have somebody
13 from the White House there to handle the press, so
14 it's possible that -- and I had some recollection,
15 I've been questioned about this before, that there
16 was a lady from the press office who was kind of
17 standing outside that I didn't know that was there,
18 but there wasn't any press, which was the good news.

19 Q How long did you remain at Mrs. Foster's
20 home that morning?

21 A I didn't remain long because there was
22 going to be a briefing at the White House by the Park

1 Police and I wanted to be there.

2 Q How did you know that?

3 A I don't have any idea. Probably David told
4 me or somebody told me that there was going to be a
5 briefing.

6 Q Do you think they told you that sometime in
7 the evening of the 20th or early morning hours of the
8 21st?

9 A Yes.

10 Q While at the Foster residence?

11 A Yes.

12 Q So you had the understanding when you went
13 home the night of Mr. Foster's death that there would
14 be a Park Police briefing the next morning?

15 A I'm not sure of that, but at some point I
16 knew it.

17 Q And then I take it you went to the White
18 House?

19 A Right.

20 Q What's the next thing you recall happening
21 in connection with Mr. Foster's death at the White
22 House?

1 A I sat in on the briefing and had the Park
2 Police describe what they found at the park and
3 describe what they thought, that it was, in their
4 opinion, it was suicide.

5 Q Now, before attending that briefing on the
6 morning of the 21st -- that briefing was in
7 Mr. Watkins's office, wasn't it?

8 A Right.

9 Q Before going into Mr. Watkins's office for
10 that briefing, did you have any discussions with
11 anyone at the White House?

12 A I can't tell you whether it was before or
13 after. I at some point learned that the President
14 had authorized a military aircraft to return the
15 body, and I was asked to accompany Vince back home,
16 which I was honored to do. At some point I was told
17 that the President was going to brief the entire
18 White House staff, and I was asked to stay for that,
19 but as far as Vince's death, this was the only event
20 that I was attending.

21 Q You didn't have any conversations, that you
22 recall, with Mr. Nussbaum prior to the morning

1 briefing?

2 A No.

3 Q Now, in the course of that morning
4 briefing, I take it it was the Park Police who did
5 the majority of the talking?

6 A Yes.

7 Q Was there any discussion at that time about
8 how the investigation into Mr. Foster's death would
9 be handled?

10 A There was. I remember that they said they
11 would need to get in Mr. Foster's office. They
12 recognized there were issues involving how White
13 House -- involving a high White House official, but
14 who would they be working with on that.

15 Q Did someone respond to that inquiry?

16 A I believe Mr. Nussbaum did.

17 Q What do you recall Mr. Nussbaum said?

18 A That he would be responsible.

19 Q Did he say whether or not he would allow
20 them access to Mr. Foster's office?

21 A My impression -- and I don't remember the
22 specifics of that part of the conversation, but my

80

1 impression was they would work it out, yes.

2 Q Other than what you've just described, were
3 there any other conversations relating to how the
4 investigation would be handled?

5 A You mean as far as between the Park Police
6 and Mr. Nussbaum?

7 Q Well, I'm also going to ask you about the
8 Department of Justice, but that's good, why don't we
9 limit it to the Park Police and Mr. Nussbaum.

10 A Between Bernie and the Park Police, I don't
11 recall any others. I believe Mr. Hamilton was there
12 by that morning. I had a conversation with Bernie
13 about it. I know at some point there was some --
14 Justice got involved, and frankly I don't remember
15 anything about that, other than I might have talked
16 to Phil Heymann about it, but I did have
17 conversations with Bernie that morning.

18 Q What do you recall about your conversations
19 with Mr. Nussbaum?

20 A I suggested to Bernie that they not -- the
21 White House counsel's office not be involved in this
22 investigation to the extent there had to be an

1 investigation.

2 Q What did you mean when you told
3 Mr. Nussbaum that the White House counsel's office
4 shouldn't be involved?

5 A My recollection of it, and it certainly was
6 very brief, was that I suggested to Bernie that the
7 White House counsel's office recuse and think about
8 having somebody independent handle it.

9 Q Why did you think that an appropriate
10 suggestion to make to Mr. Nussbaum?

11 A We had just gone through the travel office
12 investigation. Vince and I had had some very
13 heartfelt discussions about whether they ought to
14 bring in independent counsel to handle that
15 investigation. And I felt that Vince would have
16 wanted somebody independent to be there handling it
17 to avoid any appearance.

18 Q Do you think in the context of discussing
19 your suggestion with Mr. Nussbaum, you mentioned
20 specifically the travel office investigation?

21 A I don't believe I did. That was in my
22 mind, but it was very short because people were

1 moving very quickly after the Park Police gave the
2 briefing. It was a very short conversation.

3 Q Now, what precipitated that conversation,
4 Mr. Hubbell? Was it something you had intended all
5 morning to say to Mr. Nussbaum or did something occur
6 at the briefing?

7 A It was something I had intended to do all
8 morning.

9 Q When did it first occur to you that you
10 should mention that to Mr. Nussbaum?

11 A Probably at the same time I was thinking of
12 other things in the middle of the night.

13 Q Was Mr. Nussbaum the first person that you
14 mentioned it to?

15 A I don't know if I had mentioned it to Bill
16 Kennedy prior to that or not.

17 Q Now, Mr. Kennedy has testified that he
18 overheard you mentioning it to Mr. Nussbaum. Is that
19 consistent with your recollection?

20 A I believe so. I might have talked -- I
21 might have said to Bill, I'm going to talk to Bernie
22 about recusing, but -- like I said, we were all --

1 the White House is not a big place, especially near
2 David's office, so we were all kind of out in the
3 hall.

4 Q What, if anything, do you recall about
5 Mr. Nussbaum's response to your suggestion?

6 A He said, really. I remember him looking at
7 me like surprised that I would think of that. Do you
8 really think so? And I said yeah, Bernie, I really
9 think you ought to. And he said well, I'll talk to
10 you about that. And it was just -- it was kind of
11 a -- you know, nobody had suggested that to him kind
12 of surprise.

13 Q He was clearly surprised by that issue?

14 A Well, I knew that Bernie had a different
15 view than Vince did about the White House counsel's
16 office, so I'm not -- I was not surprised that he
17 would be surprised that I would suggest it, but I had
18 hoped at some point to be able to sit down and talk
19 to him about my views about it, as a friend.

20 Q With Mr. Nussbaum as a friend?

21 A Yes.

22 Q When you say that Bernie had a different

1 view than Vince about the White House counsel's
2 office, what do you mean by that?

3 A When they had been talking about bringing
4 in outside counsel for the travel office
5 investigation, Congressional investigation, Vince had
6 told me that Bernie felt like that if they did that,
7 they would be relinquishing the role of White House
8 counsel, so I was not surprised that he would
9 probably have the same view in this case.

10 Q Now, when you -- I think you used the
11 phrase "outside counsel." Do you mean private
12 attorneys or do you mean from some other agency?

13 A I would have thought private attorneys.

14 Q Now, when you were suggesting to
15 Mr. Nussbaum on the morning of the 21st that they let
16 someone else handle it, someone other than the White
17 House counsel's office, who were you referring to as
18 someone else?

19 A I didn't have anything in mind. I know the
20 issue also was involved with who would head up the
21 investigation, who had jurisdiction over this
22 investigation.

1 Q So you weren't suggesting particularly that
2 some agency do it; you were just suggesting to
3 Mr. Nussbaum that he not do it?

4 A Right.

5 Q Other than the response of Mr. Nussbaum as
6 you have indicated, what else did Mr. Nussbaum say at
7 that time?

8 A Nothing more. I think he had -- I think, I
9 don't remember this for sure, but I think they pretty
10 quickly had to go to either a press briefing or a
11 briefing of the President or something, and they all
12 left.

13 Q Now, did you ever discuss this topic
14 further with Mr. Nussbaum?

15 A No, unfortunately I did not.

16 Q "Unfortunately" meaning if you had, he
17 might have done it differently and we might not be
18 here?

19 A I don't know. I wouldn't want to say
20 that. I just never was able to sit down and talk to
21 Bernie about it.

22 Q He didn't refuse to discuss it with you?

1 A Oh, no, no.

2 Q Was there any discussion at this time or at
3 any other time on the 21st, to the best of your
4 knowledge, about what role you should play,
5 Mr. Hubbell, in the investigation into Mr. Foster's
6 death?

7 A At some point, and I cannot tell you
8 whether it was -- my best recollection would be it
9 would be after I got back from Little Rock. At some
10 point Phil and I had a discussion, Phil Heymann, that
11 although I didn't need to recuse, that they were
12 going to try to keep me out of it just because of the
13 closeness of the situation, and I agreed.

14 Q What do you mean by "the closeness of the
15 situation"?

16 A This is my best friend. I was, to some
17 extent, playing the role of -- I don't know what you
18 would call it -- with the family, the kids and Lisa
19 of advising them on a myriad of issues that were
20 coming up. Although I wasn't their lawyer and they
21 had Jim Hamilton, I'm the one that Lisa and the kids
22 would ask questions to. Sheila would as well. So I

1 just didn't feel like I should be in the middle of
2 it. I would like to know what was going on, but I
3 wasn't going to be in the middle of it.

4 Q In this conversation with Mr. Heymann, your
5 best guess is that it occurred sometime after you
6 returned from Mr. Foster's funeral?

7 A But it could have -- it could have -- I
8 don't remember how quickly that investigation went.
9 I remember the events after I got back, but it could
10 have happened beforehand. I pretty much didn't go to
11 Justice after that day until I got back, but it is
12 possible that Phil and I had this conversation before
13 I left, but I doubt it.

14 Q What day did you physically return to
15 Washington from Little Rock after Mr. Foster's
16 funeral?

17 A I probably got back that Monday night.

18 Q You did not return with the President on
19 Friday the 23rd of July?

20 A No, I stayed with Lisa, and my wife stayed,
21 and we did a lot of the things you have to do: Get
22 her in touch with her lawyers, make sure the kids

1 were okay, just a million things that you have to get
2 done. And I think -- I'm pretty sure I flew back on
3 Monday. I just don't know exactly when I got back.

4 Q Now, you were describing a conversation
5 that you had with Mr. Nussbaum. Am I correct that
6 that occurred after the Park Police briefing on the
7 morning of the 21st?

8 A Right.

9 Q What's the next thing that you recall doing
10 on the 21st?

11 A I went to the briefing the President gave
12 the staff at the White House and afterwards I went to
13 the Foster home to report to Lisa and the kids on
14 what I learned and stayed there the entire day.

15 Q You didn't return to the White House on the
16 21st?

17 A I don't believe I did.

18 Q And you don't think you went to the Justice
19 Department at all on the 21st?

20 A I really don't believe I went to Justice.
21 It is possible that I ran by there, I mean, because I
22 had a whole schedule to disengage. And it is

1 certainly possible that I went by there, but most of
2 the time I was with Lisa.

3 Q Did you talk to Attorney General Reno at
4 any time on the 21st that you recall?

5 A I'm sure that I did, but I don't know what
6 I said. It mainly was grief-type discussion.

7 Q You don't remember discussing with Attorney
8 General Reno or anyone else at the Justice Department
9 anything about the handling of the investigation into
10 Mr. Foster's death?

11 A No.

12 Q To the best of your recollection, is the
13 only person that you suggested -- strike that.

14 You've told me that you suggested to
15 Mr. Nussbaum that the White House counsel's office
16 not be involved in that investigation; is that
17 correct?

18 A Yes.

19 Q Did you ever suggest that to anyone else?

20 MS. SHORES: That the White House counsel's
21 office not be involved?

22 MR. JOHNSON: Yes.

1 THE WITNESS: I may have much later talked
2 to Jim Hamilton about it.

3 BY MR. JOHNSON:

4 Q When you say "much later," do you mean --

5 A Not much later, but several weeks later.

6 Q Now, do you think you talked to
7 Mr. Hamilton about it after the public criticism
8 about the handling of that investigation had
9 surfaced?

10 A At least the criticism -- the discussions
11 of the criticism I had with Phil Heymann about it.

12 Q I think, if I've been listening carefully
13 enough, what you've told me is that other than what
14 you've testified about, you don't recall any
15 conversations with people physically -- while you
16 were physically at the White House or Justice
17 Department on the 21st. Am I right?

18 A Right, right, but I'm subject to being
19 refreshed, believe me.

20 Q I'm not aware of any either.

21 Why don't we -- in an effort to refresh,
22 let's take a look again at your cellular phone logs,

1 which we previously identified as P000108, 109 and
2 110. If you could, for the day of the 21st where
3 there are a lot of telephone calls that appear to be
4 placed, tell me which telephone numbers you
5 recognize.

6 A Do you want me to start with the 21st?

7 Q I think we've ascertained that there's
8 nothing on the 20th.

9 A Okay. On the first call is 363-6189,
10 that's the Foster residence. That is at 10:00 in the
11 morning.

12 The next call is at 10:09 and that is to
13 the Justice command center.

14 Q You don't have any way of knowing from that
15 document who you spoke with at the Justice
16 Department, if anyone?

17 A No. It could have been Phil, could have
18 been Attorney General Reno or it could have been that
19 they were patching me into somebody else, they would
20 beep me and patch me in. I think they keep a log of
21 that if they patch me into somebody, but I have not
22 seen one.

1 The next number, 202-676-2111, I do not
2 recognize that number.

3 The next number, 514-5000 is command center
4 again.

5 Q You don't have any recollection of who, if
6 anyone, you may have spoken with at that time?

7 A No. The next number is Little Rock,
8 225-2239 at 10:26. I don't have a recollection of
9 who that is. I don't recognize that one.

10 Q Are you certain it's not the First Lady's
11 number?

12 A Yeah, the First Lady's number would be a 66
13 number. That's where her mother was, what used to
14 be -- what we used to call the old Mohawk district,
15 because I think this next number might be the First
16 Lady's number, 663-76 --

17 Q Why don't you not read that one in the
18 record but you can indicate it to me.

19 A Okay. I don't know that for sure, but I
20 may recognize that.

21 Q You're referring to the fourth entry down;
22 is that correct?

1 A Right.

2 MR. KRAVITZ: Why don't you refer to it by
3 the time.

4 BY MR. JOHNSON:

5 Q A call that appears to have been placed at
6 10:44 in the morning on July 21 and it looks like a
7 telephone call took place for approximately nine
8 minutes; is that correct?

9 A Yes.

10 Q And you think that may have been to the
11 First Lady's mother's residence in Little Rock?

12 A Right, it could have been.

13 Q Did you speak with the First Lady?

14 A If I called, I would have spoken to her.

15 Q Do you have any recollection at all today,
16 Mr. Hubbell, about what you and Mrs. Foster spoke
17 about?

18 A Mrs. Clinton?

19 Q Thank you. Mrs. Clinton.

20 A If I made -- if that's the phone call, no,
21 I do not. I have recollection of a meeting I had
22 with the First Lady, but not of any phone calls. I

1 told you that I am certain that we talked. I mean,
2 we were both in shock, but I do not have any
3 recollection.

4 Q Can you say one way or the other -- I
5 realize you don't -- you think you did speak, but you
6 don't recall specifically. Can you say with any
7 certainty one way or the other about whether or not
8 prior to your traveling to Arkansas you ever spoke
9 with Mrs. Clinton about the contents of Mr. Foster's
10 office or whether or not a suicide note had been
11 found?

12 A I am confident we didn't talk about the
13 contents of his office. It is possible that I would
14 have said something like -- she would have said, Web,
15 is there any note, and I would have said no.

16 Q Are you speculating about the likelihood of
17 that or do you actually recall that?

18 A I'm speculating it's a likelihood. I'm
19 confident she didn't say anything like, Web, are
20 there files in his office or anything like that. It
21 just wasn't the type of conversation we would have
22 had.

1 Q Why don't you tell me about the other
2 telephone numbers.

3 A The next call at 11:23 is to the White
4 House operator, and it's for, it looks like, two
5 minutes.

6 Q Do you have any recollection today about
7 who you may have spoken with?

8 A No, I do not. The next number is the White
9 House, 456 -- I guess I shouldn't do that. The next
10 one is the White House as well, and that is the White
11 House counsel's office. I believe that's Bill
12 Kennedy's number.

13 Q Do you remember anything about -- do you
14 remember whether or not you spoke with Mr. Kennedy?

15 A No, I do not.

16 Q So therefore you don't remember anything
17 about what you may have said to each other if did you
18 speak?

19 A No. The next number is a 703 number, a
20 Virginia number, and I'm not totally sure but I
21 believe that may be Bill Kennedy's residence.

22 Q Again, you don't have any recollection of

96

1 speaking with Mr. Kennedy?

2 A No. And it's for less than a minute so I
3 might have been told that he was at home and tried to
4 call him and didn't get him.

5 MR. KRAVITZ: Just for the record, can you
6 indicate what time it was that you called
7 Mr. Kennedy's White House office?

8 THE WITNESS: Yes. 12:29.

9 MR. KRAVITZ: Thank you.

10 BY MR. JOHNSON:

11 Q It's okay, Mr. Hubbell. Just carry on with
12 these phone calls.

13 A The next number is a 202, 224-6437 number.
14 I don't recognize that number. It's a six-minute
15 call, but I don't recognize it.

16 Q Can you say by looking at the number
17 whether or not it's a government office?

18 A No, it should not -- it's probably a
19 residence. And again, this is at 2:00 in the
20 afternoon so it's highly likely that somebody --
21 anybody could have been using the phone by that time
22 at the Foster's house. I did not limit and say you

1 must be a government official to use my phone on that
2 day.

3 MR. JOHNSON: Off the record.

4 (Discussion off the record.)

5 THE WITNESS: The next one is an 800 number
6 and I do not recognize it at all.

7 The next number again -- 1427, I don't
8 recognize at all.

9 The next number is a White House number for
10 five minutes, 14:57.

11 BY MR. JOHNSON:

12 Q Do you recognize the extension?

13 A I do, but I can't remember who it is right
14 now. I mean, I'm trying to think about it.

15 Q If you do recall we'll come back to it.

16 A Okay. The next one is the Justice command
17 center again.

18 Q No recollection again about who you may
19 have spoken to?

20 A No recollection.

21 The next one is Marietta, Georgia. That's
22 got me stumped, so I don't know who that might have

1 been.

2 The next one is the Justice command
3 center. The next one is my office.

4 Q Do you have any recollection of speaking to
5 your office on that day?

6 A I'm sure I would have called and said,
7 Kathy, anybody calling, I'm not going to make it in
8 for the rest of the day. It looks like a less than
9 minute call. So it was probably Kathy, I'm not going
10 to be in the rest of the day.

11 The next number, four minutes, 17:13, I
12 guess that's 5:13, is a White House number. I
13 recognize it. I believe that is the chief of staff's
14 number.

15 Q Do you have any recollection about speaking
16 with Mr. McLarty or anyone else in the chief of
17 staff's office?

18 A I would have more likely talked to Bill
19 Burton than the chief of staff.

20 The next number is a Maryland number. I
21 don't know for sure, but it's likely that that is
22 Michael or Harolyn Cardoza's number, who Michael was

1 with me when we first went into Justice and Harolyn,
2 for those two days, went to my house and answered my
3 phone for me and was just a saint.

4 The next number is a White House number,
5 it's at 5:21. I believe that is Marsha Scott's
6 number.

7 Q Do you recall anything about your
8 conversation with Ms. Scott?

9 A No.

10 Q What was Ms. Scott's job?

11 A At that time she was head of White House
12 correspondence.

13 Q You and Ms. Scott were personal friends as
14 well?

15 A Yes, we went to high school together.

16 The next two numbers are Justice command
17 center numbers, again. And I don't have any
18 recollection. Actually the next three.

19 The next number I do not recognize. It's a
20 local number, but I don't recognize it.

21 The next number, two numbers, are White
22 House numbers. And I think I couldn't remember one

100

1 of these numbers. I believe that these are the
2 numbers at 18:01 and 18:04, these would likely be the
3 numbers of Bruce Lindsey's office.

4 (Mr. Comey left the room.)

5 BY MR. JOHNSON:

6 Q Do you have any recollection about
7 conversations you may have had with Mr. Lindsey or
8 anyone else at his office on that day?

9 A No. Just -- by that time people were
10 coming in and we were starting to make calls about
11 transporting not only Vince home, but who would be
12 going on what plane back.

13 Q So your best guess would be that it was
14 about funeral arrangements or travel arrangements?

15 A Yes. There were a lot -- Marsha and my
16 wife spent a lot of time on funeral arrangements, as
17 well as there were three couples flying up that ended
18 up flying back with us, you know. There were all
19 kinds of funeral arrangements and logistics that were
20 going to occur. When is the funeral going to be?
21 People were calling me saying when is the funeral
22 going to be, things of that sort.

1 Here is that 225 number again. 2239. That
2 was for 12 minutes.
3 Q Is that a Little Rock number?
4 A That's a Little Rock number.
5 Q The same Little Rock number you referred to
6 earlier?
7 A That I didn't -- both of these are very
8 long phone calls.
9 Q You don't recognize that number?
10 A I don't recognize that number. Both are
11 very long phone calls, and I just don't recognize
12 them.
13 Q Did Mr. Foster have family residing in
14 Little Rock?
15 A Yes, he did. He did.
16 Q Did you speak with any of Mr. Foster's
17 family in Little Rock?
18 A Sharon Bowman, who I've told you about,
19 lived in Little Rock, so we had been talking to her a
20 lot.
21 Q I thought she was in Washington?
22 A She was in Washington to visit. She lived

1 in Little Rock.
2 Q Did she return to Washington -- to Little
3 Rock on the morning of the 21st?
4 A I think she returned the same time Vince
5 did, but her husband was still at home, as were the
6 children.
7 Q Do you know their telephone number?
8 A No. You know, I just -- it would be easier
9 for me to pick up the phone and call it, and I would
10 probably know who it is.
11 The next number is in Little Rock, and I do
12 not recognize that number.
13 The next two numbers I don't recognize.
14 Both of those are less than a minute. The next one
15 is the Justice command center.
16 Q No recollection?
17 A No. And people, by that time, would be
18 beeping me.
19 Q Let me just interrupt you for a second.
20 A You've got more, gee.
21 Q I apologize, I know this is tedious.
22 A Actually there are only four more. Why don't we just

1 carry on.

2 A Okay. The next two, I don't recognize that
3 number. The next one is in Fayetteville. I think
4 that could have been the Blairs' number.

5 Q Do you have any recollection of speaking
6 with the Blairs on the 21st?

7 A I'm confident I did.

8 Q This is the Mr. Blair who you have earlier
9 described as the general counsel at Tyson Foods?

10 A Right, right.

11 Q What do you recall about your conversations
12 with Mr. Blair?

13 A More sympathy and shock and everything
14 else.

15 Q Did Mr. Blair know Mr. Foster?

16 A Yes. In fact, Vince clerked in their firm
17 when he was a student at Fayetteville.

18 Q And other than what you've just said, you
19 don't recall anything more specifically about it?

20 A No. And then the last call on the 21st is
21 the command center at 11:30 that night, 11:37 that
22 night.

1 Q Thank you, Mr. Hubbell.

2 A I wish I -- the Little Rock number has got
3 me stumped.

4 Q Write it down and call it when you leave.

5 MR. KRAVITZ: What is the time on the
6 number, the call to Mr. Blair?

7 MR. JOHNSON: The Fayetteville call, it's
8 the only one indicated on the document, and it is at
9 21:11 on the 21th.

10 MR. KRAVITZ: 9:11.

11 THE WITNESS: Yes.

12 BY MR. JOHNSON:

13 Q On the -- strike that, Carmen.

14 On the 21st, Mr. Hubbell, you've described
15 one conversation with Mr. Burton on the topic of
16 locking Mr. Foster's office. Did you have any other
17 conversations with Mr. Burton or anyone else on that
18 day on that topic?

19 A No.

20 Q You've described one conversation with
21 Mr. Nussbaum about your view that the White House
22 counsel's office should not be involved in the

1 investigation into Mr. Foster's death. Did you have
2 any further conversations with Mr. Nussbaum or anyone
3 else on that topic on that day?

4 A No, I did not. I really, after I got to
5 Lisa's house, became almost a family member making
6 arrangements.

7 Q And I take it you remained at Mrs. Foster's
8 home well into the evening on the 21st?

9 A Yes.

10 Q After you left her home that evening -- the
11 President returned there that night; correct?

12 A Right.

13 Q You didn't have any conversations with the
14 President about Mr. Foster's documents or what he was
15 working on?

16 A No.

17 Q We do have to ask.

18 A Oh, I know. I know.

19 Q Did you go to your home after you left
20 Mrs. Foster's home on that evening?

21 A Yes, I did.

22 Q And then what happened on the 22nd that you

1 recall in connection with Mr. Foster's death?

2 A We got on the airplane and flew to Little
3 Rock that morning.

4 Q With Mr. Foster's body?

5 A With Mr. Foster's body.

6 Q Who traveled with you?

7 A On the plane I was on, David Watkins was on
8 it, Ambassador Kantor's wife was on it. She took my
9 wife's place, who didn't want to fly. She ultimately
10 flew home.

11 Q Did she drive out?

12 A No, she actually got on a commercial
13 aircraft. She just couldn't -- she said I just --
14 this is a little sidelight.

15 Q Do you want to do it off the record?

16 A No. I mean it's not a big deal. They had
17 told me they were going to fly on a C-140 back with
18 the body, and so -- but they had room for people to
19 fly on it and I was --

20 Q C-140 is a cargo jet?

21 A Yes. And Susie was not excited about
22 flying on a cargo jet. As it turned out, when we got

1 there we were on one of the President's aircraft and
2 she was mad that we were on a nice plane.

3 (Laughter.)

4 But anyway, the Anthonys were on the plane
5 with me. My son was on the plane with me. Several
6 of the people who had flown up were on the plane with
7 me, and a lot of the staff that would be necessary,
8 since the President was coming, were on the plane.

9 Q At what time did you arrive in -- I take it
10 the plane flew to Little Rock; is that right?

11 A Yes.

12 Q What time did you arrive in Little Rock?

13 A Seems like right after lunch, or right at
14 lunchtime.

15 Q What did you do upon arrival, Mr. Hubbell?

16 A I -- everybody got off and went to the
17 cars. I went with the funeral director, who I knew
18 well, and ensured that the body was actually
19 delivered to him. And then I rode with my wife back
20 to where we were going to stay, borrowed a car and
21 went to see the First Lady.

22 Q Approximately what time -- the First Lady

1 was staying at her mother's residence?

2 A Right.

3 Q Approximately what time did you arrive?

4 A I'd say around 1:00.

5 Q Who was there, if you recall?

6 A I believe -- well, her mother was there. I
7 don't remember if Chelsea was there. Bev Lindsey,
8 who is Bruce Lindsey's wife, was there, and several
9 of her staff were there.

10 Q What do you recall about your conversations
11 with the First Lady after you arrived?

12 A We first privately went and talked in a
13 room, just mourning Vince. She had been gone a lot
14 the month before and was not as aware as I was of
15 Vince's concerns about the travel office and his
16 depression. They had not seen each other very often
17 and she had a lot of questions in that area.

18 We mourned together for a while. The only
19 thing was that she raised the first of the conspiracy
20 theories that somebody had called her about and I
21 told her to have them contact me. Then we went out
22 and had lunch together, not -- at the house. We

1 ordered in from our favorite Mexican restaurant.

2 Mr. Kennedy came and we all three had lunch.

3 Q When you say she raised the first of the
4 conspiracy theories --

5 A You don't want to know about this.

6 Q Some wild theory about circumstances of
7 Mr. Foster's death?

8 A Right, right. Somebody had called her with
9 it.

10 Q Someone who was an acquaintance of hers had
11 called her with it?

12 A Yeah, actually one of our law partners who
13 had gotten a call from a professor at Fayetteville.

14 Q During the time that you met privately with
15 Mrs. Clinton, did you discuss with her whether or not
16 a suicide note had been found?

17 A I discussed with her that a suicide note
18 had not been found.

19 Q Did you tell her whether or not anyone had
20 looked in Mr. Foster's office for a suicide note?

21 A No.

22 Q Did she ask you?

110

1 A I don't remember her asking. I mean, I
2 think we discussed the fact that there wasn't a note
3 and that -- which was -- we thought unusual of Vince,
4 but we didn't talk about where we looked or anything
5 like that.

6 Q Did you convey to her that you had asked
7 either Mr. Burton or Mr. Nussbaum whether they had
8 found a note?

9 A I don't know, I really don't.

10 Q Other than generally there being discussion
11 about the fact that no note had been found, do you
12 recall anything more than that?

13 A As far as a note is concerned?

14 Q Yes.

15 A No. I don't think I ever talked to her.
16 At one point we had some thought that Vince had
17 mailed a note to his mother, but I don't think I
18 talked to Hillary about that.

19 Q Who had -- when you say "we had some
20 thought," who are you referring to?

21 A At some point we learned that a package had
22 been sent the day of his death to his mother, and we

1 had some belief that it is possible that there was
2 contained in it a note and so we took some steps to
3 have somebody with Vince's mother when she got the
4 mail because we were concerned that she would be --
5 all of a sudden there would be the letter from Vince.

6 Q How do you think you learned that a package
7 had been mailed?

8 A Somehow I think I heard it through Bernie
9 or somebody that Vince's secretary had remembered
10 sending a package to Vince's mother.

11 Q Do you think you knew that when you arrived
12 at the First Lady's residence or First Lady's
13 mother's residence on the 22nd?

14 A I'm sure I did know about it then.

15 Q Given how the mail sometimes work, if it
16 had been mailed on the 20th it might arrive on the
17 22nd?

18 A Yes.

19 MR. KRAVITZ: Unlikely.

20 BY MR. JOHNSON:

21 Q What else do you recall about your private
22 conversation with the First Lady, Mr. Hubbell, that

1 are not purely on the topics of grief and
2 reminiscence?

3 A That would be it.

4 Q Did you discuss with the First Lady at that
5 time, or at any time, whether or not she had spoken
6 with Susan Thomases?

7 A No.

8 Q As you sit here today, do you know whether
9 or not she spoke with Susan Thomases?

10 A I do not, other than what I've read in the
11 newspaper.

12 Q Did you speak with Susan Thomases?

13 A I'm sure at some point I talked to Susan,
14 but I don't remember talking to Susan.

15 Q Do you remember what you may have talked
16 with her about?

17 A Just that our good friend Vince was dead,
18 but she -- at some point I learned that Vince had
19 talked to her about the travel office, but I think
20 that was much later.

21 Q How do you think you learned that, one
22 possibility being she told you?

1 A One possibility being she told me, or the
2 other possibility would be that Phil or somebody else
3 told me that he had consulted with her about the
4 travel office.

5 Q Did you ever have any conversation with
6 Mrs. Thomases at any time concerning the contents of
7 Mr. Foster's office or the review of the contents of
8 Mr. Foster's office?

9 A No.

10 Q That's true even as we sit here today?

11 A Yes.

12 Q Did Mrs. Clinton tell you how she had been
13 informed of Mr. Foster's death?

14 A You know, I'm sure she did, but I don't
15 have any memory of it.

16 MR. JOHNSON: Off the record.

17 (Discussion off the record.)

18 (Recess.)

19 BY MR. JOHNSON:

20 Q I think we were discussing, Mr. Hubbell,
21 your conversations with the First Lady after you
22 arrived in Little Rock on the 22nd. And I know the

1 time is short, so I'll ask sort of conclusory
2 questions and rely on -- questions and rely on you to
3 help me. At any time on that day or at any time up
4 to and including today, have you ever discussed with
5 Mrs. Clinton the contents of Mr. Foster's office?

6 A No.

7 Q Have you ever discussed with Mrs. Clinton
8 how the contents of Mr. Foster's office should be
9 reviewed?

10 A No.

11 Q Do you have any information directly or
12 indirectly on whether or not Mrs. Clinton ever
13 discussed either of those two topics with anyone?

14 A No, I do not.

15 Q Now, have you ever discussed with
16 Mrs. Clinton her knowledge about who, if anyone,
17 entered Mr. Foster's office on the evening of the
18 20th?

19 A No.

20 Q We have information that's also been
21 reported in the press that Mr. Nussbaum was in there
22 for some period of time on the evening of the 20th.

1 Have you ever spoken with Mr. Nussbaum about that?

2 A No.

3 Q Have you ever spoken -- we also have
4 information that Maggie Williams and Patsy Thomasson
5 may have been in that office on that evening. Have
6 you ever spoken with Ms. Williams or Ms. Thomasson
7 about their activities on that evening?

8 A I have not.

9 Q We're making good progress. Have you ever
10 spoken with the President or the First Lady about
11 Mr. Nussbaum's or Ms. Williams's or Ms. Thomasson's
12 entry into Mr. Foster's office on the evening of the
13 20th?

14 A No, I have not. I'm making this easy.

15 Q Don't let me miss anything.

16 A No, I have not.

17 Q Did -- now, obviously the circumstances
18 surrounding the White House's participation in the
19 investigation into Mr. Foster's death have been
20 commented on in the press. I take it you've read
21 those comments.

22 Have you ever discussed with anyone at the

1 White House the circumstances surrounding the review
2 of the contents of Mr. Foster's office?

3 A The White House, no.

4 Q The obvious next question is, have you ever
5 discussed that with anyone at the Justice Department?

6 A Yes, I have.

7 Q Tell me who you have discussed that with.

8 A I discussed it with Phil Heymann. I don't
9 know if David Margolis was there as well, but I
10 certainly talked to Phil about it.

11 Q When do you recall discussing that with
12 Mr. Heymann and perhaps Mr. Margolis?

13 A My recollection was when I returned, I
14 don't know if it had already been reported in the
15 press or something, but Phil and I had a discussion
16 where he had told me that he had had some difficulty
17 with Mr. Nussbaum regarding the way they reviewed the
18 documents that were in Vince's office.

19 Q You're clear this is after the documents
20 had been reviewed?

21 A Yes, absolutely.

22 Q What did he describe as the difficulty?

1 A He said that they thought they had an
2 understanding about the way they would be reviewed
3 and that when they got there, it was a much more, I
4 guess he would say, aggressive litigator's position
5 that was being taken by Bernie.

6 Q Did he feel as if Mr. Nussbaum had
7 interfered with the Justice Department's efforts?

8 A No, he didn't. He, in fact, said
9 specifically he did not think that he had interfered,
10 but that other people were upset about it and that he
11 thought it could lead to problems and that he had had
12 to talk to Bernie about it.

13 Q What sort of problems did Mr. Heymann
14 indicate that it could lead to?

15 A He thought that the Park Police were close
16 to saying that Bernie had -- was interfering with the
17 investigation.

18 Q Now, do you recall whether or not this
19 conversation took place before or after Mr. Foster's
20 handwritten note had been found?

21 A I believe it was before, because I remember
22 that as a separate conversation, but I may be off

1 timewise.

2 Q You returned to Washington, I think your
3 testimony was it was sometime the evening of the
4 Monday following Mr. Foster's funeral.

5 A Right.

6 Q And press accounts and information that we
7 have indicate that Mr. Neuwirth may have found that
8 handwritten note on the 26th. Other information that
9 we have indicates to us -- I don't mean to suggest
10 this to you as a fact, but just to help place it in
11 time, Mr. Hubbell -- that the Department of Justice
12 may have been informed about that late in the
13 afternoon of the 27th. So I guess having said that,
14 can you now say whether or not you spoke with
15 Mr. Heymann and perhaps Mr. Margolis or the 27th or
16 sometime after that?

17 A With regard to the note?

18 Q No, sir, with regard to Mr. Heymann saying
19 that the Justice Department had had difficulty with
20 Mr. Nussbaum.

21 A Help me. When did they look at the
22 documents in Vince's office?

1 Q Well, the documents were reviewed by
2 Mr. Nussbaum in the presence of others in the early
3 afternoon of the 22nd.

4 A Okay. That helps. I just wanted to make
5 sure that it wasn't the following week.

6 Q No, sir.

7 A It was after I was gone.

8 Q It was when you were in Little Rock.

9 A Okay. I had the conversation about the
10 difficulties prior to the discussion about the note.
11 That was a separate knowledge that I had about the
12 note that came later.

13 Q So before the note -- the discovery of the
14 note was made known to you, you had this conversation
15 with Mr. Heymann. Have I said that correctly?

16 A That's correct.

17 Q And in this conversation, Mr. Heymann said
18 to you that he thought the Park Police were close to
19 stating or feeling that Mr. Nussbaum had interfered
20 with the investigation?

21 A Yes.

22 Q Did he elaborate on that at all?

1 A He told me that he had gotten a call from
2 Tom Collier at Interior, asking for Phil's help and
3 that he had had a conversation with Bernie. And I
4 think in that same conversation I offered, I said
5 Phil, if it's still a problem, do I need to call
6 Bernie and he said no, I think everything is worked
7 out and everything is cool. And I said fine.

8 Q Did he tell you anything about the content
9 of his conversation with Mr. Nussbaum?

10 A No, I mean, other than he had to be firm
11 with Bernie and explain that this was the position
12 that the Park Police were taking, Bernie needed to be
13 careful and realize that other people might view his
14 aggressive, litigating-type stance as interference.

15 Q You think Mr. Heymann actually used those
16 words in describing his conversation with
17 Mr. Nussbaum, that others might view it as
18 interference?

19 A I don't know that for sure. I mean, I'm
20 trying to recall a conversation that's almost two
21 years old, but that's the crux of it.

22 Q Did he say anything about Mr. Nussbaum's

1 response to that?

2 A Bernie -- he said Bernie said -- you know,
3 my impression was that Bernie went no, I don't want
4 that, I'm just -- this is the way I practice, you
5 know, this is the way we deal with privilege issues
6 back when he practiced law.

7 Q When you spoke with Mr. Heymann, did you
8 get the impression that the conversation he was
9 describing with Mr. Nussbaum had just recently
10 occurred?

11 A No, I believe it had occurred while I was
12 in Little Rock, because he made it clear to me that I
13 didn't need to call Bernie and say, Bernie, you've
14 got to think about this from a different
15 perspective. I didn't have to make that call.

16 Q Now, you don't recall whether or not
17 Mr. Margolis was present during that conversation?

18 A No.

19 Q Do you think you discussed it separately
20 with Mr. Margolis?

21 A I just don't know. I mean, because I had
22 several -- it got to the point where Phil would -- if

1 I had a question, he would refer me to Dave and so
2 it's possible that I talked to Dave as well.

3 Q But you don't have any independent
4 recollection?

5 A Right.

6 Q Other than this conversation with
7 Mr. Heymann that you have described, what other
8 conversations did you have regarding the
9 circumstances surrounding the review of the documents
10 in Mr. Foster's office?

11 A I'm sure -- I've been asked about it by
12 several people, but I don't think I've had other
13 conversations about it.

14 Q Did you call anybody in the White House?

15 A No, I did not.

16 Q Why not?

17 A Because Phil had said that it had been
18 taken care of, that it wasn't a problem anymore.

19 Q Then I take it there came a time when you
20 learned that a handwritten document of Mr. Foster's
21 had been found; is that correct?

22 A Yes.

1 Q How did you learn that?

2 A I think I read it in the newspaper.

3 Q No one at the Justice Department told you
4 that?

5 A No.

6 Q Did that annoy you?

7 A No. I just -- I wanted to find out what
8 was in it.

9 Q How did you do that?

10 A I went to Phil and Phil said he thought
11 that it would be okay for me to see it. In fact, I
12 might be helpful in interpreting it for them, and he
13 sent me to Dave Margolis.

14 Q Do you have any understanding of what day
15 this was or how many days after the note had been
16 discovered? Can you place it in time at all?

17 A It seems like if the note was found on
18 Monday, I remember there was some contact with the
19 family, some contact with the President, so it was
20 delayed and so when it -- I think it was latter part
21 of the week that it started hitting the press that
22 there had been this note found.

1 out another way, but I'm pretty sure I found out
2 about it in the press.

3 Q So you went to Mr. Margolis to see the
4 actual note or the contents of it?

5 A I asked to see the note.

6 Q Did Mr. Margolis have the note?

7 A No.

8 Q Then what happened?

9 A He showed me what he said was a copy of the
10 note.

11 Q You said that in a way that leads me to
12 believe you today doubt whether or not it was a copy
13 of the note.

14 A It was not a copy of the note. I looked at
15 it. It was Vince's words but it wasn't his
16 handwriting.

17 Q You knew that instantly?

18 A So I said, Dave, this isn't Vince's
19 handwriting, and Dave said what? And so it caused
20 some consternation and then we realized it was a
21 transcript of the note by the Park Policeman.

22 Q Mr. Margolis himself had believed prior to

1 that time he was seeing an actual photocopy?

2 A Dave told me it was a photocopy of the
3 note.

4 Q How did you learn it was a transcript of
5 the Park Policeman?

6 A Dave told me. They wanted to find out what
7 the deal was.

8 Q Sort of immediately, did you call the Park
9 Police right away?

10 A Dave did something. He walked out of the
11 room and later came in and said, Web, it's a
12 transcript.

13 Q What's the next thing, Mr. Hubbell, that
14 you recall in connection with the note?

15 A Dave told me the circumstances, where -- I
16 asked the obvious questions, where did they find it,
17 how was it torn up. He asked me to help him
18 interpret some of it and he asked my reaction to the
19 note.

20 Q Did Mr. Margolis indicate to you one way or
21 another any opinion about whether or not the
22 circumstances of the review -- document review

1 conducted by Mr. Nussbaum contributed to the delay in
2 finding the note?

3 A No.

4 Q He didn't say if Bernie had just done it a
5 different way, we'd have had this thing last week or
6 no words to that effect?

7 A No, no.

8 Q He wasn't critical in any way, so far as
9 you recall?

10 A Not with regard to the note, no.

11 Q Was he -- putting aside the note, was he
12 independently critical of --

13 A Yeah, I think Phil and Dave were critical
14 of the way Bernie handled it.

15 Q Do you remember anything about what
16 Mr. Margolis said by way of criticism of the way
17 Mr. Nussbaum handled it?

18 A No.

19 Q You generally recall his being critical,
20 but that's it?

21 A Yes.

22 Q What's the next thing that happened in

1 connection with the note, Mr. Hubbell?

2 A I'll be honest. I really don't remember
3 anything coming up until ultimately there was a big
4 issue whether the note was going to be given to the
5 press or not, and I think that was much later on.

6 Q Now, you indicated before we took our break
7 earlier in the afternoon that at some point in time
8 you had a conversation with Mr. Heymann about whether
9 or not you should recuse yourself or distance
10 yourself from the activities. Can you place that
11 conversation in time?

12 A Probably the first conversation that we
13 had. I just don't know whether that was before I
14 left town or as soon as I got back. It wasn't a
15 recusal. In fact, he said you don't have to recuse
16 but we're just going to keep you out of it.

17 Q Was there any suggestion in that
18 conversation that it might be seen as inappropriate
19 by the press or the public or others for you to be
20 involved in some way in the investigation?

21 A No. I mean, it was -- you know, if it
22 involved a friend of yours, you know, and I was

128

1 likely to be a witness in the investigation, and I
2 think they just thought it's best that Web -- it's
3 his area to begin with. I mean, it wasn't like this
4 was my -- under my auspices. The FBI was under Phil.

5 Q You didn't have any responsibility for
6 criminal investigations?

7 A No, not criminal under the criminal
8 division. I did under the civil division.

9 Q And, to the best of your knowledge, there
10 was never any discussion about the possibility that
11 your closeness or perceived closeness to the White
12 House might create some appearance of a conflict if
13 you were to be involved?

14 A I'm sure there could have been those kind
15 of conversations. I just didn't participate in them.

16 Q Did that thought ever enter your mind, that
17 it was better for you to stay distanced because of
18 how close you were perceived to be?

19 A I thought it was a good idea for me to
20 stay -- to know what was going on, but not to be
21 involved in any decisions with regard to the
22 investigation.

1 Q Did you do your best to honor that
2 judgment?

3 A Yes, I did.

4 Q Now, later in time the FBI opened up an
5 investigation under the title of obstruction of
6 justice investigation into the handling of the note.
7 Did you become aware of that?

8 A No, that's news to me.

9 Q So you never asked anyone on your staff to
10 investigate why the FBI was investigating obstruction
11 of justice?

12 A No.

13 Q You're pretty certain about that?

14 A I'm pretty certain about that.

15 Q There was also a period of time later in
16 time when there was a fair amount of publicity
17 surrounding the note and the finding of the note.
18 Did you ever take any steps to limit or put a lid on
19 that kind of publicity?

20 A I did convey to Phil the feelings of the
21 family concerning the publicity of the note.

22 Q What do you recall about that?

1 A I remember that Lisa and Sheila were
2 adamant that they thought it was an invasion of
3 privacy for them to give the press actual copies of
4 the note, and I felt I owed it to Phil and them that
5 they know that the family felt that way.

6 Q You didn't try to exercise any influence to
7 prevent the release of the note or --

8 A No, I did not, but I did feel like they
9 needed to know where the family stood on it.

10 Q Did you discuss -- did you ever discuss
11 with Nancy McFadden the topic of the publicity
12 surrounding the note?

13 A I'm sure I did tell her that the family was
14 upset about it.

15 Q Did you ask Ms. McFadden to convey the
16 family's sentiments or any other thing regarding the
17 publicity surrounding the note to anyone at the
18 Justice Department?

19 A No, other than, like I said, I told Phil.

20 Q Let me just do a couple of sweeping things
21 here because we're approaching the hour.

22 MR. KRAVITZ: Go ahead. As long as it

1 really is quick because I have a meeting with the
2 Senators.

3 MR. JOHNSON: I'm intending to do it in 30
4 seconds.

5 MR. KRAVITZ: Thanks.

6 BY MR. JOHNSON:

7 Q The topics of principal interest to us,
8 Mr. Hubbell, are information that anybody may have
9 concerning entry into Mr. Foster's office on the
10 evening of the 20th. And I don't mean this as a
11 memory test or a means to impeach, but as we sit
12 here, do you think you've told me everything you know
13 about that?

14 A I do. I don't know if anybody ever went
15 into that office.

16 Q You don't have any personal knowledge?

17 A One way or the other. Nobody has told me
18 they did or didn't.

19 Q Another topic of interest to us is the
20 circumstances surrounding the review of the contents
21 of Mr. Foster's office on the 22nd. As we sit here
22 today, do you think you've told me everything you

1 know about that?

2 A I do. I mean, there was more than one
3 conversation with Phil about the circumstances of the
4 review. I think I've told you there was the
5 principal one, but I'm sure it came up again with
6 Dave because there was a lot of publicity about it.

7 Q Other than what you've described to me, do
8 you recall any more specifically any other
9 conversations?

10 A No, no. They were all the same tenor, you
11 know, I wish it had been handled a different way
12 because we would not have the problem we're having.

13 Q Have you ever spoken with Mr. Nussbaum
14 about that review or how he conducted it?

15 A No, I have not.

16 Q Another topic of interest to the Committee
17 is the circumstances surrounding the discovery of the
18 note and the handling of the note. As we sit here
19 today, do you think you've told me everything you
20 know about that?

21 A I do.

22 Q Do you have any other information you would

1 like to offer the Committee on the topic of
2 Mr. Foster's death or the handling of the death or
3 the investigation?

4 A I did have a conversation with Jim Hamilton
5 about Bernie's handling of the note. I think I told
6 you that.

7 Q I'm not sure did you. Can you tell me what
8 you recall about that?

9 A I told Jim that I had suggested Bernie be
10 recused and this was a problem, and Jim told me in
11 his opinion Bernie had handled it appropriately.

12 Q Do you recall anything more than that,
13 about that conversation?

14 A No.

15 MR. KRAVITZ: Do you have anything --

16 MR. JOHNSON: Do you have anything?

17 MR. KRAVITZ: I actually am going to have
18 some questions. I was trying to interrupt you.

19 Actually, I'm really sorry but there are a few points
20 that I'm going to have to go into a little bit of
21 detail on the record. We can go off the record.

22 (Discussion off the record.)

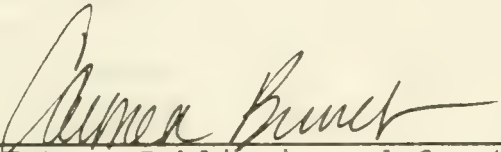
1 (Whereupon, at 6:00 p.m., the deposition
2 was adjourned, to reconvene at 9:30 a.m., on Friday,
3 July 14, 1995.)
4
5

6 WEBSTER L. HUBBELL
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

135

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

**DEPOSITION OF BERNARD W. NUSSBAUM
IN RE: S. RES. 120**

VOLUME II

THURSDAY, JULY 13, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of BERNARD W. NUSSBAUM, called for further examination pursuant to agreement by counsel, at 9:52 a.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.

Majority Chief Counsel

MICHAEL CHERTOFF, Esq.

Majority Special Counsel

EVERETT C. JOHNSON, JR., Esq.

Majority Deputy Special Counsel

JAMES B. COMEY, Esq.

Majority Deputy Special Counsel

RICHARD BEN-VENISTE, Esq.

Minority Special Counsel

U.S. Senate

Committee on Banking, Housing, and Urban Affairs

534 Dirksen Building

Washington, DC 20510

On behalf of the Committee.

THOMAS B. GRIFFITH, Esq.

Deputy Senate Legal Counsel

Office of Legal Counsel

U.S. Senate

Room 642, Hart Building

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Wachtell, Lipton, Rosen & Katz

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New York, New York 10019-6618

On behalf of the Deponent.

ALSO PRESENT: VINCENZO A. DELEO
TIMOTHY P. MITCHELL

CONTENTS

| WITNESS | EXAMINATION |
|-------------------------------|-------------|
| Bernard W. Nussbaum [Resumed] | |
| by Mr. Chertoff | 339 |
| by Mr. Ben-Veniste | 476 |
| by Mr. Chertoff | 494 |

EXHIBITS

| Bernard W. Nussbaum | |
|---------------------|------------|
| DEPOSITION NUMBER | IDENTIFIED |
| Exhibit BN 1 | 426, 4251 |

1 PROCEEDINGS

2 Whereupon,

3 BERNARD W. NUSSBAUM

4 resumed the stand and, having been previously duly
5 sworn, was examined and testified further as follows:

6 EXAMINATION (Continued)

7 BY MR. CHERTOFF:

8 Q Mr. Nussbaum, you're still under oath.

9 Let me direct your attention to the 27th of
10 July about which you were testifying when we
11 concluded yesterday. In your conversations with the
12 Attorney General, did you -- that evening when you
13 informed her about the note, did you tell her about
14 the circumstances of the previous day in which you
15 had seen the note in your office that Mr. Neuwirth
16 was putting together, and then the various people
17 that you talked to about the note afterwards?18 A Well, I have a vague recollection of
19 starting to tell her the circumstances under which
20 the note was found, namely Neuwirth turning over the
21 briefcase and the scraps falling out, but before I --
22 my memory is there's other people there and you could

340

1 check with them, but my memory is before I can
2 complete the telling of the story, she said -- she
3 sort of interrupted me and said she thinks this note
4 and whatever fax I wish to convey along with this
5 note should be conveyed -- should be given to the
6 Park Police.7 And so -- and I said fine, as I testified
8 yesterday, I said fine, call the Park Police and I'll
9 be glad to do it any way you see fit. And
10 thereafter, I don't think we engaged in any
11 discussion about the circumstances of the finding of
12 the note or what occurred thereafter.13 Q In fact, you summoned the Park Police to
14 the White House afterwards that evening; right?15 A Actually, Phil Heymann summoned them to the
16 White House.17 Q And you asked Mr. Heymann to stay after the
18 Attorney General left?

19 A I believe so, yes.

20 Q Did you have conversations with Mr. Heymann
21 about the circumstances in which the note had been
22 discovered the previous day?

1 A I think so. I think I told Heymann the
2 story, exactly what happened, I mean, briefly.

3 Q Did you tell Mr. Heymann that Mr. Burton
4 had seen the note?

5 A I don't remember. It wasn't a question and
6 answer every step of the way. It was the general
7 circumstances of how the note was discovered.
8 Mr. Heymann did not conduct an interview of me in any
9 detail with respect to this matter.

10 Q Did Mr. Heymann make any observations to
11 you at that time about what had transpired on the
12 previous Thursday, the 22nd of July?

13 A I believe not.

14 Q Did he say anything critical about the fact
15 that you should have allowed the investigators, on
16 the 22nd of July to have completed their work the way
17 it was originally requested they do so?

18 A Well, there's an assumption in your
19 question which I don't accept. But putting aside the
20 assumptions in the question I don't accept, I don't
21 remember him saying anything like that.

22 Q Did he say anything about whether this

1 should have been discovered on the 22nd of July?
2 "This" being the note.

3 A No.

4 Q Did he seem annoyed?

5 A No.

6 Q Did he express an opinion concerning the
7 way in which you had handled the note up to that
8 point in time? When I say "the note," I mean the
9 writing.

10 A No.

11 Q No opinion one way or the other?

12 A No opinion.

13 Q Did you request him to stay?

14 A I don't remember. I don't remember.
15 Maybe.

16 Q How much time were you in his presence
17 after the Attorney General left?

18 A Until -- for a while.

19 Q An hour?

20 A Half hour, an hour.

21 Q What did you talk about?

22 A I don't know if we were continually in each

1 other's presence. I may have walked out of the chief
2 of staff's office. We were waiting for the Park
3 Police to come. I don't remember what we talked
4 about, other than a general description of the
5 circumstances of the finding of the note.

6 I've known Mr. Heymann a long time. We
7 were involved in many matters together. We could
8 have talked about a lot of different things in
9 addition to the note.

10 Q When the Park Police officer came to pick
11 up the note, did he interview you at that time?

12 A Yes, he did.

13 Q Did he interview you about the
14 circumstances in which the note had been located in
15 the briefcase?

16 A Yes.

17 Q Did he interview you about whom you had
18 shown the note to?

19 A He may have. I don't remember. I remember
20 sitting down with him at a table in the chief of
21 staff's office, putting the note together and then
22 having him ask me questions and me answering the

1 questions and him taking notes. So if you've got his
2 notes, you know what he asked me and what I said to
3 him.

4 Q How long did that process of dealing with
5 the Park Police officer take?

6 A I don't think very long. Half hour or so,
7 but that's a rough guess.

8 Q Did you tell Mr. -- do you remember if the
9 Park Police officer was someone by the name of Megby?

10 A It sounds vaguely familiar. I remember he
11 was baldish. He had no hair; a little like you,
12 Mr. Chertoff.

13 Q He must have been a good-looking fellow,
14 Mr. Nussbaum.

15 A I'm under oath, Mr. Chertoff. I can only
16 go so far.

17 MR. BEN-VENISTE: No comment. The record
18 will show I made no comment.

19 (Laughter.)

20 BY MR. CHERTOFF:

21 Q Was Mr. Burton with you during the
22 interview?

1 A I don't remember. You have a record of the
2 interview from your paralegal. You may have. I
3 don't know. I don't remember, but you're entitled to
4 it ask me for my memory, and I don't remember.

5 Q Was Mr. Heymann present?

6 A I think so.

7 Q Were Mr. Gergen and Mr. McLarty present?

8 A I think so, but they weren't really -- they
9 were in the office. They were in and out of the
10 office. The chief of staff's office is a fairly
11 large office, and we were sitting -- the agent and I
12 were sitting sort of at the table in the office. He
13 has a conference table.

14 There's a lot of other areas, seated areas
15 in the office, so you can conduct an interview with
16 me in that conference table and people can have a
17 conversation in another part of the office and it
18 wouldn't interfere. So I don't believe they were
19 sort of sitting next to me while I was talking to the
20 Park Police agent.

21 Q Now, you actually assembled the note in
22 front of the Park Police agent?

1 A I believe I did that.

2 Q That was the original?

3 A That was the original.

4 Q And then afterwards, you told the Park
5 Police agent about the fact that you had asked
6 Mr. Neuwirth on the preceding Monday to conduct an
7 inventory of the files and material in Mr. Foster's
8 office; correct?

9 A I don't remember if I told him that or not.

10 Q And did you indicate to the Park Police
11 officer that, in the briefcase in the office, torn
12 pieces of paper had been found by Mr. Neuwirth?

13 A Oh, I indicated -- I believe I indicated
14 that when the briefcase was turned over, torn pieces
15 of paper floated out and were found by Mr. Neuwirth.

16 Q Did you tell the officer that the pieces of
17 paper were then taken to your office where they were
18 assembled?

19 A Yes, that's what happened, so I believe I
20 told that to the officer.

21 Q Did you tell the officer that you were then
22 notified and came yourself to look at the writing?

1 A I may have told that to the officer. It's
2 funny, when I think back on the event, I can't
3 remember, sort of at this moment, being notified. I
4 remember walking into my office and seeing Neuwirth
5 sitting there, putting the pieces together, as I told
6 you yesterday. I don't remember how I happened to go
7 into the office. It could have been that I just
8 walked in to my own office or it could have been that
9 I was outside the office and I got a message, please
10 come back to my office and walked in.

11 At this point I don't remember. Whatever
12 the fact was, if the officer asked me about that
13 issue, I told him what the fact was.

14 Q In any case, once you were in the office,
15 you were clearly notified, Mr. Neuwirth told you?

16 A No question about that.

17 Q And you told that to the officer?

18 A Absolutely.

19 Q Did you then tell the officer that you had
20 gone to Bill Burton to notify him about the note or
21 the writing?

22 A I have no memory now of what I said with

1 respect to that. If it's reflected in a report, I
2 have no reason to question it, but if you ask me what
3 my memory is now, I have no memory.

4 Q Did you tell the officer that a
5 notification had been made to the chief of staff the
6 previous Monday of the note being found?

7 A I have no memory now of what I said to the
8 officer on that occasion. I described various events
9 that occurred with respect to the finding of the
10 note. He took him down, and I have no independent
11 memory of what I said at that point.

12 Q Is it at least fair to say that you recall
13 that you discussed with the officer the events of the
14 preceding day, that Monday, as it related to the
15 handling of the note?

16 A That's fair to say.

17 Q Is there anything you deliberately excluded
18 from your conversation with the officer, any fact?

19 A I recall not deliberately excluding -- I
20 did not deliberately exclude any relevant fact,
21 that's correct.

22 Q Did you make -- was there some fact that

1 you remember thinking about, whether it was relevant
2 or not, and making a decision not to mention?

3 A No, I don't recall that thought process at
4 the time. This was not a lengthy interview, and it
5 was not an intensive -- it was not the kind of thing
6 we're doing the last two days, what did you do this
7 minute, next minute, that minute and that minute. It
8 was not. It was what happened, and I described in a
9 general way what happened. It was not purported to
10 list every fact that day. I didn't deliberately
11 decide to exclude any particular facts.

12 Q There came a time later that week that you
13 had an interview with agents of the FBI concerning
14 the discovery of the writing; correct?

15 A Yes, that's correct. I believe that's
16 correct, yes. I was interviewed again, and I believe
17 that's correct.

18 Q And that was at a point in time after the
19 FBI had initiated an investigation into the
20 circumstances of the handling and discovery of
21 Mr. Foster's writing; correct?

22 A That's correct.

1 Q And that was an investigation that was
2 ordered by the Deputy Attorney General?

3 A That's correct.

4 Q Do you remember a telephone conversation
5 that Mr. Heymann had with a number of people at the
6 White House on, I believe it was the Thursday of the
7 week of the 26th, in which he indicated in very
8 strong terms that he wanted to have cooperation with
9 this investigation?

10 A I remember an investigation commencing and,
11 I do remember Mr. Heymann requesting cooperation with
12 an investigation and I remember saying to
13 Mr. Heymann, when he requested it of me, you will
14 have full cooperation, as you always have, from the
15 White House.

16 Q What did Mr. Heymann say in that phone
17 call?

18 A Just that he wished full cooperation with
19 this investigation.

20 Q Did he indicate that he didn't want to have
21 any interference?

22 A No.

1 Q Did he indicate that he wanted things to be
2 different than they had been the previous week?

3 A The only difference that I remember with
4 respect to the later investigations, and Heymann and
5 I discussed this issue, was he said he didn't want
6 White House lawyers sitting in on interviews as they
7 had the day after. I said I thought that was
8 unreasonable his request. I thought it was wrong.
9 He said well, he mentioned when he was Assistant
10 Attorney General in the Carter Administration, they
11 had the Billy Carter investigation and things like
12 that, they didn't want White House lawyers, it
13 doesn't look good. He's not suggesting anybody's
14 been doing anything wrong but it looks better if
15 White House lawyers are not there. And I said I
16 didn't agree with that. And I either said I would
17 think about it, or maybe I decided -- I did think
18 about it. It was the middle of that phone
19 conversation. I said okay, but that's what he
20 wanted. That's what's going to happen.

21 This idea of not having lawyers present for
22 interviews is, if there's something obstructive about

1 that in some fashion, I didn't find -- I didn't think
2 that was a good idea, but I acceded that Heymann's
3 request in that regard.

4 That's the only difference I recall that we
5 discussed between the way the investigation would
6 proceed now and the way they proceeded previously.

7 Q Is it that he didn't want to have lawyers
8 present for the interviews or he didn't want to have
9 lawyers from the White House counsel's office, which
10 was itself the subject of the investigation?

11 A Well, that's a good point. He said he
12 didn't want to have lawyers from the White House
13 counsel's office present in the interviews.

14 Q Because those lawyers themselves were going
15 to be subjects of the investigation?

16 A No, I don't think that was the reason. I
17 don't know what his reason was. He didn't want to
18 have lawyers from the White House counsel's office
19 present. At one point we did discuss whether other
20 people had other lawyers present, outside lawyers,
21 and he said people want outside lawyers present, you
22 can't stop somebody from bringing an outside lawyer.

1 It isn't practical for most employees of an
2 executive agency, other than in extreme
3 circumstances, to easily obtain able outside counsel,
4 and therefore, the net effect of saying the White
5 House counsel can't act, even though there's no basis
6 for why they shouldn't be able to act, is really to
7 prevent people from having lawyers at these
8 interviews. That's the practical effect.

9 Q Let me ask you this question --

10 A In any event, I acceded. I acceded, even
11 though I didn't like it, I didn't agree, I didn't
12 think it was proper, I acceded. I said fine, I'll do
13 it your way.

14 Q You didn't disagree or you didn't agree?

15 A I didn't agree.

16 Q I want to be sure we understand what's
17 being investigated. At this point, you understood
18 that an investigation was being opened into whether
19 there was an impropriety or illegality in the way in
20 which the note or the writing was handled by the
21 White House counsel's office; right?

22 A No, I wouldn't characterize it necessarily

1 like that. There was an investigation into the facts
2 and circumstances arising -- an investigation of
3 facts and circumstances respecting the finding of the
4 note.

5 Q And that investigation included inquiring
6 to see whether there was any impropriety or
7 illegality?

8 A Obviously if there was impropriety or
9 illegality, it would be determined presumably in the
10 course of such investigation, but I think it was a
11 factual inquiry to determine what are the facts and
12 circumstances. Then you can make a determination
13 later on as to where you go from there.

14 Q That's any criminal investigation is a
15 factual inquiry, isn't it?

16 A I don't agree this is a criminal
17 investigation. You're making assumptions -- this was
18 a factual inquiry. A factual inquiry may lead to a
19 criminal investigation or it may not lead to a
20 criminal investigation.

21 Q Did you understand your own actions were
22 going to be the subject of this inquiry?

1 A I understood that what I did with respect
2 to the finding of the note would be examined.

3 Q So would Mr. Neuwirth's actions?

4 A Correct.

5 Q And in general, so would the actions of the
6 White House counsel's office; right?

7 A The facts and circumstances that occurred
8 involving each of these people would be looked into,
9 yes.

10 Q And yet you felt that lawyers who were part
11 of the White House counsel's office could sit in and
12 advise other members of the White House counsel's
13 office in an investigation in which the lawyers might
14 themselves be witnesses. You didn't see a problem
15 with that?

16 A I didn't see a problem unless there was
17 some basis for people to believe or some facts
18 emerged in one way or another, that this would turn
19 into an act of criminal investigation. At least at
20 the preliminary stage, I didn't see a problem but it
21 made no difference. Heymann didn't want to do it and
22 I went along with him. And maybe he was right. In

1 retrospect, maybe he was right with respect to this
2 matter.

3 My initial reaction was lawyers from the
4 White House counsel's office should be present.
5 There's nothing with them being present. No one did
6 anything wrong. This is a factual inquiry. If
7 lawyers from the White House counsel's office are not
8 present people are going to go without lawyers
9 because people are not going to go get outside
10 lawyers. They don't have the financial capacity.
11 That was my initial reaction. Maybe with respect to
12 this one, Phil is right.

13 Since you're looking at this kind of
14 conduct, in addition to the fact that it would look
15 better that there's no charge of White House
16 manipulation, which I think was what was really
17 driving him, not the so-called conflict that you're
18 talking about right now. But maybe in these
19 circumstances, his was the correct judgment and my
20 initial reaction was incorrect. In any case, I
21 adhered to his judgment with respect to this matter.

22 Q Did you know before you had that

1 conversation with Mr. Heymann that a senior member of
2 the Department of Interior had made complaints about
3 the White House treatment of Park Police to the
4 Department of Justice?

5 A I did not know they made complaints to the
6 Department of Justice, the senior White House
7 Interior officials. I had conversations with senior
8 White House Interior official --

9 Q I'm sorry, senior Interior officials, not
10 White House.

11 A I think I made the mistake. I did not know
12 what a senior Interior official was saying to the
13 Department of Justice.

14 Q But you had had conversations with the
15 senior Interior official?

16 A Correct.

17 Q That was Mr. Collier?

18 A Correct.

19 Q He complained about the way the Park Police
20 were treated?

21 A No, he didn't really complain about the way
22 the Park Police were treated.

1 Q What was the conversation?

2 A The conversation was the Park Police, after
3 the finding of the note, claimed to be unhappy about
4 the way they were treated. That was the
5 conversation.

6 Q And what did you say?

7 A I said -- I said it's unfortunate that the
8 note was found four days after the search. I
9 recognized that law enforcement officials, such as
10 the Park Police, could be embarrassed by the late
11 finding of the note, but I think their complaints are
12 sort of after the fact complaints, that they had no
13 complaints at the time, nor was anything wrong done
14 at the time. And they have no basis for their
15 complaints, but really what they're trying to do now
16 is sort of -- is sort of be upset about matters which
17 they weren't upset about at the time they occurred.
18 Because a note was found four days later, therefore
19 there was a potentiality for embarrassing them.

20 Q Why would they be embarrassed that they
21 didn't find the note on the 22nd when they never
22 physically were able to look for the note on the

1 22nd?

2 A They were present on the 22nd --

3 Q But did they ever get their hands on the
4 briefcase?

5 A No, they never got their hands on the
6 briefcase.

7 Q You had your hands on the briefcase?

8 A Yes.

9 Q Did you say to Mr. Collier, tell the Park
10 Police there's nothing to be embarrassed about, I'll
11 simply say I never let them look at the briefcase, I
12 maintained it in my custody?

13 A I didn't say that to Mr. Collier.

14 Q Wouldn't that be a fair thing to do to
15 spare the Park Police embarrassment?

16 A No.

17 Q Did you make it clear publicly after the
18 fact that the Park Police had not had an opportunity
19 to inspect the briefcase because you had maintained
20 custody and control of it?

21 A The way the search was conducted was
22 described publicly.

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1 Q Was the public description that the search
2 had occurred in the presence of the Park Police?

3 A I don't know. If you ask me what my best
4 memory is now, I believe so, yes.

5 Q Did that make it clear in your mind that
6 with respect to the briefcase, you were the only
7 person who had the opportunity to look in the
8 briefcase, along with members of your White House
9 counsel's staff?

10 A Yes.

11 Q You thought you had made that clear
12 publicly?

13 A If I say the search -- it was made clear
14 publicly that the search was conducted by me in the
15 presence of law enforcement officials.

16 Q And you thought that made it clear that the
17 Park Police never had an opportunity to look at that
18 briefcase before the note was pulled out of it on the
19 26th?

20 A I don't know if that specific issue was
21 discussed publicly. If it was discussed publicly, it
22 would have been clear. I did have possession of the

1 briefcase, not the Park Police.

2 Q Did Mr. Gergen have a conversation with you
3 around this same time, in the middle of the week of
4 July 6th, concerning the way in which the
5 investigation had been handled up to that point and
6 the way it should be handled in the future?

7 A Maybe, but I don't recall it right now.

8 Q Did Mr. McLarty?

9 A Perhaps, but I have no present recollection
10 of it.

11 Q After Mr. Heymann indicated he was ordering
12 an investigation concerning the discovery of the note
13 and related matters, you were interviewed by the FBI;
14 right?

15 A I believe so.

16 Q Did you have anybody present with you
17 during the interview?

18 A I don't recall.

19 Q Did anybody prepare you for the interview?

20 A I don't recall that right now. I don't
21 believe so, but I don't really recall specifically.

22 Q Did you talk to Mr. Neuwirth before the

1 interview about what the interview -- the subject
2 matter of the interview?

3 A Probably, but I have no present memory, but
4 it's highly likely I did.

5 Q Did you talk to Mr. Sloan about it?

6 A In all probability, but I'm not sure.

7 Q What did the agents ask you about in the
8 interview?

9 MR. PEDOWITZ: Can I request copies of
10 these interview memos so we can have an opportunity
11 to see what's in them?

12 MR. CHERTOFF: I don't think that I'm in a
13 position to do that, Mr. Pedowitz. I don't think --
14 it's a document which has been provided to us in
15 confidence. In general, in my experience, the Bureau
16 does not like to have these things disseminated.
17 Without knowing exactly what prior testimony has been
18 given, I'm inferring from your question that no other
19 investigative agency has previously turned over the
20 document, and I just don't feel I'm at liberty to do
21 it.

22 I'm not going to ask you whether you've --

1 I assume from the question that you haven't seen it.
2 I'm not going to ask you to validate the interview,
3 but the fact that I may have a copy of interview
4 notes, which I'm looking at it to suggest questions,
5 I think is fair, and I guess I don't feel like I'm in
6 a position to let you have it.

7 MR. PEDOWITZ: It seems to me incredibly
8 unfair to suggest that a deposition is going to be
9 taken in which there are implications suggested
10 during the examination that things are omitted from
11 interviews; questions are asked about what was said,
12 what was not said; suggestions that things were
13 omitted and have occurred.

14 We have never had an opportunity to see
15 those memos. We assume -- maybe you can tell me --
16 are those memos going to be made part of the public
17 record in the Senate hearing?

18 MR. CHERTOFF: I don't know the answer to
19 that. And I guess what I would consider doing is
20 finding out at some point from the FBI, and also from
21 the Independent Counsel, whether they have a problem
22 releasing this to you in advance of the public

1 testimony.

2 MR. PEDOWITZ: Do you have a restriction on
3 your use of that document?

4 MR. CHERTOFF: Not that I'm aware of -- let
5 me withdraw that.

6 There's a restriction in the sense that I'm
7 not allowed to -- other than using it in the course
8 of the investigation, I'm not allowed to disseminate
9 it publicly or anything of that sort. I mean, it's
10 held committee confidential, in really much the same
11 way that if I were using it to get someone to testify
12 before a grand jury when I was a prosecutor.

13 MR. PEDOWITZ: I've been told that I have
14 the right to ask clarifying questions at this
15 particular deposition, and I would like to have an
16 opportunity to see those interview memos so that I
17 can have an opportunity to examine the witness and
18 clarify the record. And I think again, that if there
19 are no restrictions on your use of that document, you
20 have the ability, one, to mark it and make it an
21 exhibit in connection with this deposition.

22 You also have the opportunity to show it to

1 the witness to refresh the witness's recollection,
2 and I would like to have the full and fair
3 opportunity, before Mr. Nussbaum testifies both at
4 deposition and at hearing, to understand what your
5 view of the facts are in this matter. And I find it
6 to be unfair that we have not had an opportunity to
7 see that document and you're examining from it. So
8 that the record is perfectly clear, it appears --
9 again, I'm not trying to read over your shoulder --
10 but it appears that you are examining from interview
11 memos, and I would very much like to have an
12 opportunity to read it, and the witness would, too.

13 MR. CHERTOFF: Let me say this. We got
14 this from the FBI as part of our production, and I
15 guess I'd be perfectly happy to call over to
16 Mr. Fishman and see whether they have an objection to
17 my either reading it aloud or showing it to you for
18 purposes of an examination, or both.

19 MR. PEDOWITZ: I'd like to limit it not
20 only to the FBI interview but also to the Park Police
21 interview, which you referred to before.

22 MR. CHERTOFF: I guess that came from the

1 Park Police. I'd have to check from the Park
2 Police. I mean, obviously you understand that in
3 many cases I'm asking questions with knowledge of
4 testimony other witnesses have given.

5 I certainly don't think it's -- that the
6 general principal that I'm obliged to show the
7 witness in advance every other witness's testimony is
8 true. Nevertheless, I'm very happy to ask the FBI or
9 the Department of Justice if they're willing to let
10 me do it.

11 MR. BEN-VENISTE: Here's my suggestion and
12 an observation. It is my understanding that last
13 year the FBI and Park Police and other investigative
14 agency memoranda were indeed made a part of the
15 public record.

16 MR. CHERTOFF: Eventually they were, yes.

17 MR. BEN-VENISTE: Secondly, I think there
18 is a valid distinction that you've alluded to, Mike,
19 between the interview notes reflecting statements
20 made by other witnesses and interview notes -- FBI
21 FD 302 reports and other Park Police reports,
22 reflecting investigators' notes of the interview of

1 the witness who is being deposed.

2 I don't think there is any restriction
3 whatsoever with respect to making notes available to
4 a witness as compared with disseminating the reports
5 for the purpose of allowing a witness to attempt to
6 refresh his recollection and/or take issue with the
7 accuracy of any notes, particularly if those notes
8 may well find their way into the public record here.

9 As a matter of fairness to the witness, it
10 seems to me appropriate that he be allowed to review
11 the notes for both accuracy and whether those notes
12 refresh his recollection. And I think our interests
13 are served if there is a full record, based on the
14 ability of a witness to both refresh his recollection
15 and possibly correct what he may regard as
16 inaccuracies in the notes.

17 I will further observe that with respect to
18 other witnesses in these proceedings, portions of
19 interview notes have been read into the record for
20 either the attempt to refresh the witness's
21 recollection or for other purposes.

22 So in all, I think as a matter of fairness

1 and as a matter of the fullness of our investigation
2 and completeness of our investigation, that
3 Mr. Pedowitz's request is an appropriate one. And I
4 don't think that the FBI or Department of Justice has
5 any interest in the way we conduct our examination in
6 this regard.

7 MR. CHERTOFF: Let's cut it short. If you
8 have the opinion, Mr. Ben-Veniste, that it's
9 consistent with our confidentiality agreement to show
10 the witness and his lawyer these interviews, I'm
11 happy to do it.

12 MR. BEN-VENISTE: Great.

13 MR. PEDOWITZ: I'd like to broaden my
14 request slightly so that you understand my position
15 on fairness. This is a point I wanted to make a
16 little bit later. But in addition to official
17 interviews that were conducted by FBI and Park Police
18 people, we were asked a lot of questions yesterday
19 about whether Mr. Nussbaum recollected certain
20 comments by this witness, that witness, the other
21 witness.

22 Principally, these were law enforcement

1 people, either Justice Department people, Park Police
2 and in fact, there was, as I recollect it, very
3 little in terms of attribution unless there was a
4 question very specifically about whether Mr. Margolis
5 said this or Mr. Heymann said that.

6 In any civil proceeding of which I am
7 familiar and indeed any criminal investigation of
8 which I'm familiar, there is going to be a public
9 hearing and at a minimum, I would have an opportunity
10 to see those written recordations of any statements
11 that were allegedly made by a witness; that is, any
12 statements that Mr. Nussbaum might have made that
13 were in writing. So I would like to broaden that
14 request to include any writings which you have which
15 reflect any statements that any law enforcement
16 people made or any other witnesses made about things
17 that Mr. Nussbaum has said that you have in writing
18 so we can have an opportunity to look at that and
19 again, see whether or not he agrees with it; and
20 number two, see whether or not there are things in
21 there which, as a matter of completeness, ought to be
22 part of the record so we can clarify certain

1 questions that were asked, and also give him an
2 opportunity to explain the context in which certain
3 of these statements might have been made, because
4 there might be some misleading suggestions in the
5 record, not because any misleading would be done, but
6 rather because it may be that you do not fully
7 understand the context of certain statements or
8 events. And we'd very much like have an opportunity
9 to get a broader picture of, in fact, what these
10 witnesses have put down in writing about what
11 Mr. Nussbaum may or may not have said.

12 MR. CHERTOFF: I mean, there's obviously a
13 substantial amount of testimony that's been taken
14 about these things and I guess the logic of your
15 position is that we should make that available to
16 Mr. Nussbaum now to see what everybody else has said
17 about matters he's testified about.

18 MR. PEDOWITZ: No. So you understand my
19 position very clearly, I am not asking that we be
20 provided copies of their depositions. I do
21 understand, based on what you've told me, that you
22 put very substantial restrictions on the

1 dissemination of those transcripts right now.

2 What I'm talking about is written documents
3 that you have in your possession that, in some
4 contemporaneous form, record things that Mr. Nussbaum
5 allegedly said during that period of time. Now,
6 those would include any notes that Mr. Margolis might
7 have made, any notes that Mr. Heymann may have made,
8 any notes that any secretary or any other person of
9 the Justice Department or the Park Police may have
10 made about things that the law enforcement officials
11 were saying about what Mr. Nussbaum has said, so we
12 have an opportunity, one, to see them and so see
13 whether or not, in the context of the questions that
14 have been asked, whether fair questions have been
15 asked in the context of this whole proceeding.

16 And again, I'm told I've been given the
17 right to clarify testimony and also, presumably, to
18 make this record more complete. I'm at somewhat of a
19 disadvantage -- a very significant disadvantage in my
20 view -- in that we have never seen that which is in
21 writing, which contains the statements that
22 Mr. Nussbaum allegedly made at the time.

1 Now, that does include things that
2 Mr. Ben-Veniste and you have just talked about. That
3 is, the Park Police and Department of Justice
4 interview. I don't know whether or not there are any
5 other interviews that were made about these
6 particular events. I don't know whether or not, for
7 example, you have other 302s. I'd like to see those,
8 if you have 302s.

9 I have learned in my past experience that
10 law enforcement people frequently do not accurately
11 record things that are said. They frequently miss
12 context. They frequently make mistakes. And if
13 Mr. Nussbaum's witness statements or statements of
14 other witnesses are going to be made public, we'd
15 like to have an opportunity now to see what they are
16 so we have an opportunity to confront them, both at
17 the hearing and also at this deposition.

18 MR. CHERTOFF: Well, let me draw a
19 distinction between interviews of the witness, which
20 are, I think -- I agree with you. I don't have a
21 problem with letting you see those. In the end,
22 whether someone accurately took them down or not is

1 going to come to an issue of credibility between this
2 witness and whoever wrote the interviews.

3 MR. PEDOWITZ: You posit a very different
4 scenario than I have experienced in the Senate
5 hearings. That is, I do not have an opportunity,
6 unless you give it to me and I'd very much like to
7 have it, to cross-examine any witness who makes any
8 statement about what Mr. Nussbaum said so that I
9 could have an opportunity to see -- to test the
10 credibility of the witness. I don't expect that's
11 going to happen at this hearing.

12 MR. CHERTOFF: I think that's fair to say.
13 I'm not aware of any hearing, other than an Ethics
14 Committee hearing in which the lawyer for an
15 individual witness gets to cross-examine all the
16 other witnesses. And that's in part because,
17 obviously, the hearing doesn't end with a verdict or
18 a judgment of any kind.

19 There's no decision -- final decision to be
20 made. No one is accused of anything. No one can be
21 convicted or acquitted because there's no final
22 judgment and accordingly, it doesn't operate like a

1 court. And I don't think this is the appropriate
2 time for us to revisit the way in which the Senate
3 operates.

4 To kind of get to the point, I don't have a
5 problem letting you see the interviews that -- the
6 pertinent interviews of Mr. Nussbaum. I think when
7 you get into what other witnesses have written down
8 about their own recollections, including things that
9 are internal -- their own internal documents, if you
10 want to call them diaries or records or things of
11 that sort, that don't purport to be verbatim,
12 particularly in situations in which the witnesses
13 simply said there was a conversation. I'm a little
14 more dubious -- I suppose if Mr. Ben-Veniste wants to
15 refresh Mr. Nussbaum's memory by showing him those
16 things, he's entitled to do it. I can't prevent him
17 from doing it.

18 I think my view would be, though, that in
19 terms of giving you -- I mean, I would say this: I
20 am opposed to letting you walk away with this
21 material. It's clear from my standpoint that any
22 material that you're to be shown in the deposition

1 you can look at and then is returned to us and
2 whatever; likewise, you can't make copies or things
3 of that sort.

4 I don't have a problem showing Mr. Nussbaum
5 these interview notes of him made by law enforcement,
6 and what I would propose doing actually is maybe
7 finishing up the other parts of my examination,
8 taking a break, letting you see them and then we can
9 resume parts of the examination that relate to that.

10 As far as going back now to look at other
11 people's diaries or notes or written recollections of
12 things -- of events in which Mr. Nussbaum was a
13 participant, which I do not think can be fairly
14 considered witness statements, certainly, for
15 example -- my analogy really is to the criminal rules
16 since I'm not a civil litigator -- certainly it
17 wouldn't be considered Rule 16 material that would be
18 provided to even a criminal defendant in advance of a
19 proceeding. It would be at most material that would
20 be provided after the witness has testified on direct
21 examination.

22 I guess my feeling there is if

1 Mr. Ben-Veniste wants to refresh the witness's
2 recollection by reading him or showing him -- he can
3 show him whatever the heck he wants, I guess, and I
4 don't have a basis to object unless it's a violation
5 of some privilege or some superconfidential thing.

6 So I guess what I would propose to do is
7 this: Let me finish up on some other things in the
8 examination, and then when I get back to the issue of
9 what Mr. Nussbaum has subsequently told interviewing
10 agents, I'm happy to take a break and let you look at
11 those things, and then I will ask questions about
12 it. And then I'll be done.

13 And then Mr. Ben-Veniste can refresh your
14 recollection with anything that you want with the
15 understanding being that obviously whatever you look
16 at is going to stay here, it's not going to leave.

17 MR. BEN-VENISTE: You know, let me make an
18 observation about that, Mike. You put it in terms of
19 whether I want to refresh Mr. Nussbaum's recollection
20 by showing him certain materials which you used
21 during your examination of Mr. Nussbaum to test his
22 recollection or provide him with the opportunity to

1 endorse or reject the substance of the material from
2 which you were quoting.

3 I think it's more than a quest for the
4 completeness of a witness's recollection that is
5 involved here. I think there is a right of
6 confrontation that is implicated here where a witness
7 in a serious proceeding such as this is asked about
8 certain conversations, and the basis of the
9 questioning is rooted in notes of another individual
10 who participated in the conversation, that there are
11 certain confrontation rights where fairness would
12 indicate that the witness at least be allowed to see
13 what it was that the other individual has said about
14 that conversation.

15 So I think it goes beyond issues of
16 refreshing recollection, and I would suggest that
17 perhaps majority and minority could agree that, with
18 respect to notes that were alluded to of individuals
19 who had conversations with Mr. Nussbaum. And I think
20 it might be appropriate to exclude hearsay, that is
21 someone else's version of what a participant in a
22 conversation had to say about that conversation, from

1 the body of material that we're discussing.

2 But clearly where it is an individual who
3 was a first party participant, I think rights of
4 fairness and confrontation, as well as the
5 completeness of our record, would indicate that the
6 proper course would be to make that material
7 available so that we can get this witness's full
8 recollection of the matter and provide him the
9 opportunity to take issue with the accuracy of
10 someone else's version of the conversation.

11 MR. CHERTOFF: Here's the problem. When I
12 question, and most of what I was relying on were my
13 own work product notes which are distilled from a
14 series of depositions we have taken, as well as the
15 notes. And quite plainly, you'll agree that I'm
16 entitled to keep that to myself.

17 MR. BEN-VENISTE: True.

18 MR. CHERTOFF: I think with respect to the
19 issue of confrontation, the authors of the notes are
20 not present. Frankly, some of the authors of the
21 notes haven't testified yet and most of the reports
22 or reports or descriptions include things that have

1 nothing to do with direct conversations with the
2 witness. To show to the witness would be to reveal
3 to the witness things that the witness wasn't a
4 participant in.

5 I suppose I'm prepared to do this. After
6 we've gone through these interviews, to take those
7 portions of the notes as to which witnesses have
8 testified that involve direct conversations with
9 Mr. Nussbaum -- and I believe there's only one
10 witness who's testified as to a direct conversation
11 with Mr. Nussbaum -- and to read to you -- and we'll
12 put it on the record -- those portions of the note
13 that actually incorporate the substance of the
14 discussions with Mr. Nussbaum, not discussions the
15 witness had with someone back in the department but
16 discussions with Mr. Nussbaum, and I think that would
17 complete the record.

18 You would then have, as to anybody who has
19 testified, their written recollections of
20 conversations with Mr. Nussbaum. I think in
21 fairness, the same rationale of confrontation and
22 things of that sort, people who haven't testified,

1 and therefore as to whose notes we haven't heard an
2 explanation, I think they ought to be entitled to
3 give their testimony first about the notes.

4 I believe there's one witness who has
5 testified so far from the Department who had direct
6 conversations or was directly present with
7 Mr. Nussbaum as to whom there's some probably a
8 portion of his notes or diary, or whatever you want
9 to call it, that I could find the portions in which
10 he's talked to Mr. Nussbaum.

11 I think Mr. Nussbaum has no entitlement to
12 see what person A said to person B, and I think as to
13 Mr. -- one other witness whose notes we have who has
14 not had an opportunity to testify and whom we haven't
15 even spoken to yet, I don't think it's fair to that
16 person to show notes, and maybe the person is going
17 to say they're not his notes. Who knows? I think
18 that's premature. I think certainly a witness is
19 entitled to get the first crack at the writings.

20 MR. PEDOWITZ: If it indeed is premature,
21 what I would suggest is, in fairness, prior to the
22 hearing, we would be provided access to those notes

1 so that we have an opportunity to at least address
2 them at the hearing.

3 Secondly, I would again, sort of in the
4 interest of fairness, urge you to provide us with any
5 testimony that relates to statements that
6 Mr. Nussbaum allegedly made to any witness, whether
7 in writing or ultimately as part of a transcript,
8 prior to the hearing so that we can have an
9 opportunity at the hearing to confront.

10 MR. CHERTOFF: I think it may well work out
11 that you will have an opportunity before your
12 testimony at the hearing to have, in fact, testimony
13 of other witnesses who will have testified live and
14 maybe their depositions as well.

15 Let me suggest the following. In terms of
16 events that are to occur prior to the hearing, I
17 don't think we can resolve those now. Why don't you
18 send us a letter indicating what you'd like and we'll
19 respond and maybe some of these issues will be moot
20 actually.

21 There's always a problem because you're
22 proceeding in a different order, that someone is

1 going to wind up hearing the testimony of someone
2 else first, and someone is going to wind up not
3 having an opportunity to do rebuttal or redirect or
4 recross. In other words, it would be kind of a
5 recursive situation. But let's abide the event and
6 with respect to what will be made available to
7 Mr. Nussbaum before his testimony, we can talk about
8 it. I don't think you have a right to get it before
9 the hearing. Even in a criminal case, the Rules
10 don't require, when someone is charged with a
11 criminal offense, they get all the witness testimony
12 before the hearing.

13 MR. PEDOWITZ: Frequently in fairness, it
14 is provided in advance of a hearing, and there are
15 many federal judges that require that it be provided
16 some weeks before a trial so that a lawyer can have
17 an opportunity to fairly study it and consider it
18 carefully and discuss it fully with his witness. The
19 idea of turning over statements of the witness, or --
20 the witness to be cross-examined the night before has
21 always struck me as something of a game which is
22 played by prosecutors. It's a game I never played

1 when I was a prosecutor, and I know in the office
2 that I worked in, and that you worked in, we
3 frequently had rules which were far fairer than the
4 rule that is often employed elsewhere.

5 MR. CHERTOFF: I'm not suggesting you
6 should get it the night before. What I'm suggesting
7 is it may not be the case you get it before the
8 hearing. But let's abide the event and I think for
9 purposes of the deposition, let us -- I'll finish up
10 the other things I have.

11 Let me give you an opportunity to review
12 his interviews. We'll proceed into that, and I will
13 revisit with Mr. Nussbaum those particular portions
14 of notes in which people have said -- recounted in
15 substance or in quotes conversations with him
16 provided that those people have already had an
17 opportunity to testify and of course -- let me
18 finish.

19 You, of course, will then get the
20 deposition so you will ultimately have a recordation
21 of that, and then we can abide the event in terms of
22 your desire to see things that you haven't received

1 in a deposition.

2 MR. BEN-VENISTE: A final observation that
3 I have with respect to what you've said, Mike, and I
4 think it goes much of the way toward addressing some
5 of the issues that have arisen here this morning, is
6 in terms of making a distinction between witness's
7 notes where the witness has already testified and
8 adopted those notes as compared with the witnesses
9 who have, for whatever reason not yet testified, and
10 particularly, with respect to former Deputy Attorney
11 General Heymann, whose notes were the basis of some
12 of the questioning of Mr. Nussbaum.

13 I don't think the fortuitousness of who
14 testifies first really has a significant bearing on
15 the rights of confrontation that was discussed here
16 and the fairness. If those notes are repudiated by
17 Phil Heymann or don't stimulate his own recollection,
18 that will be a part of the record. But we're not
19 going to go back and forth with witnesses and call
20 them back to provide them the opportunity to later
21 amend their testimony. All of this would be set
22 forth in the record.

1 In view of some of the questions you asked
2 yesterday, and I don't think the questions were
3 inappropriate, but as a matter of fairness, the fact
4 that Mr. Heymann has not yet testified, in my view,
5 should not be a meaningful distinction in terms of
6 willingness to provide Mr. Nussbaum with the
7 opportunity to see whether those notes either refresh
8 his recollection or spur a recollection which would
9 put those notes into a different context.

10 MR. CHERTOFF: I'm troubled by the idea of
11 doing that with notes as to which a witness hasn't
12 testified but let me reflect on that and I'll reflect
13 on it when you're in the process of reviewing his
14 prior interviews and maybe we can resolve that.

15 MR. PEDOWITZ: As you're reflecting on it,
16 I'd also ask you to consider that I expect that if
17 notes of Phil Heymann have been turned over, they
18 have been designated as such by either Mr. Heymann or
19 his attorney or by the Department of Justice.

20 MR. CHERTOFF: They come from the
21 Department.

22 MR. PEDOWITZ: And I expect the Department

1 of Justice would have been pretty careful before it
2 turned over notes to you of what are obviously
3 conversations or matters that closely relate to these
4 issues, to determine whose notes they were before
5 they indicated to you --

6 MR. CHERTOFF: I have no doubt about the
7 handwriting. I am uncomfortable about the idea of
8 not giving a witness an opportunity to see his own
9 stuff first.

10 MR. PEDOWITZ: So am I, and I'm very
11 uncomfortable with the idea that Mr. Nussbaum hasn't
12 had the opportunity to see these statements also. As
13 I say, you do have a situation here where the order,
14 as Mr. Ben-Veniste suggested, is fortuitous or
15 something here, but you're not going to have us back
16 before these hearings.

17 MR. CHERTOFF: Mr. Heymann is out of the
18 country and regrettably, we couldn't get him back. I
19 don't think we're talking about a large volume of
20 material and it would be a situation in which I would
21 read to Mr. Nussbaum on the record the portions of
22 the notes that refer to direct conversations with

1 him.

2 MR. PEDOWITZ: As long as we're talking
3 about fairness, since I am sort of reminded again of
4 Mr. Nussbaum's comment about the final line of
5 Mr. Foster's note that was referred to yesterday,
6 nobody has any desire to injure reputations here in a
7 context in which people are not given an opportunity
8 to fairly confront things that are being said about
9 them. And I would urge you to give us an opportunity
10 to see those portions of the depositions in a
11 reasonable period of time in advance of the testimony
12 of Mr. Nussbaum that refer to him directly and his
13 conduct so that we have an opportunity to see what
14 everyone has said about these particular issues at
15 the deposition and have an opportunity to see what it
16 is that we are confronting.

17 I know that these hearings will be
18 conducted under time constraints. You are not
19 conducting a trial. I will not have an opportunity
20 to cross-examine witnesses. You will not have an
21 opportunity to lay out all of the facts and all of
22 the circumstances and witnesses will not have an

1 opportunity to be examined for nine, 10 hours at a
2 time because you have limited time.

3 We ought, at a minimum, to have an
4 opportunity to prepare a statement for the witness,
5 which is based on what it is about this matter that
6 relates to that witness and what could potentially
7 injure them in the media or otherwise. And for that
8 reason, I urge upon you the opportunity for counsel
9 to read those transcripts or those portions of the
10 transcripts that relate to the conduct of their
11 clients.

12 MR. CHERTOFF: You make some good points
13 but there are other considerations. All I can tell
14 you is this is not the place -- I can't resolve this
15 here. I think probably in the last analysis, it has
16 to be resolved at a higher level.

17 I think it's well worth you putting it in a
18 letter and making that request. And the timing and
19 issues of that sort, I think, we will have to respond
20 to, have to address but there's no point in doing it
21 now because I'm not in a position to address it now
22 and I think again, we're holding the witness.

1 So why don't we abide the event in that.
2 Send us a letter, and Mr. Nussbaum is not testifying
3 next week so we're not under any great urgency, and
4 in fact, perhaps the need to deal with this precise
5 issue will have an impact on our scheduling. Perhaps
6 it should have an effect in terms of when we sequence
7 people and that's something we will take under
8 consideration.

9 Okay. Do you want to take a break now
10 actually before we proceed?

11 MR. PEDOWITZ: Sure.

12 MR. BEN-VENISTE: Let's go off the record.

13 (Recess.)

14 MR. CHERTOFF: This is what we're going to
15 do. I'm just going to address a few things first,
16 and then what I'm going to suggest we do is I will
17 give you the interviews of Mr. Nussbaum -- I guess
18 there's one other one, back -- relating to July
19 20th. I'll get that to you, too. And you can review
20 those at your leisure, and then we can talk about
21 them.

22 I will also give you the notes. Basically

1 there's 1-1/2 pages of a 1-3/4-page memorandum from
2 Roger Adams from the Department of Justice. I've
3 redacted the latter portion of that which does not
4 embody a conversation with Mr. Nussbaum.

5 Once we've done that, we can ask questions
6 about it. There are some small portions of
7 handwritten notes by Mr. Heymann, which I can easily
8 read to you, which I'll then be able to put questions
9 on, so you'll have that. That's not a particularly
10 large amount of stuff but it's interpolated with
11 several pages of notes. That will cover what is my
12 understanding of the notes we have of people's direct
13 conversations with Mr. Nussbaum.

14 I'm trying to think if there's anything
15 else.

16 MR. BEN-VENISTE: The FBI reports and the
17 Park Police reports.

18 MR. CHERTOFF: I said I was going to give
19 the interview reports. There are also notes of
20 Cheryl Mills, a conversation with Mr. Nussbaum I will
21 give to you, too. I think in any case, that is to my
22 mind, what we've used in the deposition. I will also

1 tell you that there are probably countless things in
2 the White House production that involve conversations
3 with Mr. Nussbaum. I am not producing that. I am
4 not representing to you I'm making a full production
5 of every memorialization of everything Mr. Nussbaum
6 has said.

7 I'm giving you what is the gist of what we
8 have relied upon for the purposes of the deposition
9 but there may be something more out there.

10 Understood?

11 MR. PEDOWITZ: Yes.

12 BY MR. CHERTOFF:

13 Q I want to direct your attention to the
14 period of time after Mr. Heymann had the conversation
15 with you concerning the fact that he was going to
16 start an investigation of the handling of the note
17 and its discovery on July 26, 1993, which would be
18 later in the week of July 26th.

19 Did there come a point in time when agents
20 actually came into the White House and began to
21 interview people?

22 A I believe so, yes.

1 Q And they interviewed members of your staff?

2 A I think so.

3 Q And in the course of interviews with you or
4 with members of the staff, did the agents indicate
5 that they were investigating a possible obstruction
6 of justice?

7 A I don't recall that because -- I don't want
8 to quibble about words, whether it was an
9 investigation or inquiry or a factual inquiry. If
10 you want to call it an investigation, call it an
11 investigation.

12 To me, it was -- I was told that they
13 wanted to conduct a factual inquiry with respect to
14 the circumstances under which the note was
15 discovered, since it was discovered four days after
16 the search was conducted. And that's what I was
17 told. That's what I remember being told, and that's
18 what I thought was going on.

19 Q Did you hear from other witnesses that the
20 agents were telling people in the White House that
21 they were looking to see if there was a possible
22 obstruction of justice?

1 A I have no recollection of that.

2 Q To your knowledge, did anybody call the
3 Department of Justice to complain about it?

4 A I have no recollection of that.

5 Q Did anybody call the Department of Justice
6 to discuss -- apart from the conversation you had
7 with Mr. Heymann -- to discuss the manner in which
8 the FBI was conducting its investigation?

9 A Do you have any particular name of the
10 person who may have called the Department of Justice
11 to make this complaint?

12 Q I'm asking if you know if anybody did.

13 A Maybe you can refresh my recollection with
14 a name.

15 Q I can't refresh your recollection of a name
16 of someone in the White House. Is there someone in
17 the White House who made a call to the Department of
18 Justice?

19 A At this time I have no such recollection.
20 If you can refresh me, I will try to help you.

21 Q Did anybody call Mr. Hubbell about the
22 manner in which the investigation was conducted?

1 A I have no recollection at this time but if
2 you want to refresh me, I'd be delighted to be
3 refreshed.

4 Q Did you have a conversation with
5 Mr. Hubbell about the manner in which the FBI was
6 conducting an investigation concerning the note?

7 A I have no recollection of such a
8 conversation.

9 Q You recall that Mr. Hubbell was present at
10 the briefing on July 21st at the White House; right?

11 A Yes.

12 Q After that day -- I'm sorry. After that
13 briefing, did you have any conversations with
14 Mr. Hubbell concerning Mr. Foster's documents?

15 A I don't remember any conversation with
16 Mr. Hubbell concerning Mr. Foster's documents.

17 Q Again directing your attention back to the
18 22nd of July, during the period of time that the law
19 enforcement agents were present with you in
20 Mr. Foster's office, do you recall a point at which
21 the trash in the clear plastic bag was picked up?

22 A On the 22nd while the search was going on?

1 Q Right, in the office, picked up in the
2 office.

3 MR. BEN-VENISTE: You mean held up and
4 displayed?

5 MR. CHERTOFF: Held up.

6 THE WITNESS: I have a vague memory of
7 that. I do have a vague memory of it. My memory was
8 somehow it was picked up, put on the desk and we
9 looked through it.

10 BY MR. CHERTOFF:

11 Q Did Mr. Margolis ask to have the trash
12 turned over to the law enforcement authorities to
13 look at?

14 A I don't recall that.

15 Q Did he say to you in substance you're not
16 going to claim the trash is privileged, are you?

17 A I don't recall him saying that.

18 Q Did you decline to show the trash to the
19 law enforcement authorities?

20 A I don't recall the instance happening at
21 all.

22 Q Well, you remember looking at the trash on

1 the desk; right?

2 A No, when I said I don't recall the
3 instance, I meant the repartee that you purported to
4 describe.

5 Q You do recall looking at the trash on the
6 desk?

7 A Yes, I do recall looking at the trash on
8 the desk.

9 Q And again, you looked at the trash, you
10 didn't give it to the people from the law enforcement
11 authorities?

12 A That's right.

13 Q Was there an envelope in your safe marked
14 "for eyes only: William Kennedy" at this period of
15 time, let's say from July 20th to July 30th?

16 A There may have been. I'm not sure what
17 you're talking about. There may have been. We had,
18 for example, in our safe -- this may be what you're
19 referring to -- a report -- this is the kind of
20 sensitive material we had in our office -- a report
21 on Janet Reno prior to her selection, facts we
22 gathered and things like that.

1 Kennedy was in charge of the vetting
2 process and things like that, so it's possible. It's
3 possible. I have no independent memory, but it's
4 possible that the Reno report, for example, which
5 I'll call it the Reno facts that we had, would be in
6 an envelope addressed for William Kennedy and it
7 would be put in the safe.

8 Q But you don't have a recollection of a
9 particular envelope marked "for eyes only: William
10 Kennedy" in the safe in this 10-day period?

11 A I have no independent recollection but if
12 there was such a thing, it could be something like I
13 just described.

14 Q Now, I want to direct your attention back
15 to July --

16 A Excuse me. Because of documents like that,
17 you can't just let people rummage through Foster's
18 office. I'm trying to help you, Mr. Chertoff,
19 understand.

20 Q Let me direct your attention to July 22nd.
21 On July 22nd, when you previously testified you had a
22 conversation with Susan Thomases, were you aware at

398

1 that time that Susan Thomases had worked on
2 Whitewater-related matters during the campaign,
3 presidential campaign, for the campaign?

4 A Was I aware at that time? See, at that
5 time -- I became aware at a later time when
6 Whitewater became an issue. But at that time,
7 Whitewater wasn't an issue, and I don't believe I
8 could have told you at that time what Whitewater was.

9 Q So you don't recall having an awareness as
10 of July 20th that Susan Thomases had previously
11 worked for the campaign addressing Whitewater issues?

12 A I don't recall at this point. You know,
13 obviously during the campaign in '92, I read things
14 in newspapers, and I talked to Susan from time to
15 time.

16 Q You had talked to Susan about Whitewater?

17 A I don't believe so. The only thing I
18 remember is what I told you yesterday.

19 Q Do you recall having any conversations with
20 Susan Thomases before July 20, 1993 about Whitewater?

21 A I don't recall having any conversations
22 with her about Whitewater prior to that time.

1 Q Now, I want to direct your attention to the
2 period of time when you and Maggie Williams went
3 through the documents in Mr. Foster's office later on
4 the 22nd of July to extract the documents to go to
5 the residence. Do you recall your testimony about
6 that?

7 A Yes.

8 Q And for this process, it was simply you and
9 Ms. Williams in the room, apart from a brief period
10 where Ms. Gorham may have been present; correct?

11 A Correct.

12 Q Mr. Sloan wasn't there?

13 A Well, I'm not sure. Mr. Sloan may have
14 walked in and out. There was nothing mysterious
15 about this process. Mr. Neuwirth may have walked in
16 and out. Ms. Gorham may have come in. I have no
17 present recollection of that. I do remember being
18 there with Maggie.

19 Q And you didn't complete the process of
20 identifying the personal documents before
21 Ms. Williams came; correct?

22 A That's correct.

1 Q You engaged her in the process as well?

2 A That's true.

3 Q Did you discuss her whether particular
4 documents were personal or not personal?

5 A Yes.

6 Q Did you discuss with her whether certain
7 documents were official or not official?

8 MR. PEDOWITZ: Is there some distinction
9 between that question and the one before?

10 MR. CHERTOFF: The witness has to answer.

11 BY MR. CHERTOFF:

12 Q Did you discuss whether they were official
13 or nonofficial?

14 A I'm taking that question almost
15 simultaneously with the question before. The answer
16 is yes.

17 Q Was it your understanding the documents in
18 Mr. Foster's office that related to the personal
19 finances of the President and First Lady did have an
20 official character?

21 A There was an official purpose for the
22 reason of being there. That's what I understood.

1 Q And the official purpose was that the White
2 House counsel was assisting the President, for
3 example, in the financial disclosures because that
4 was part of an official function?

5 A Correct.

6 Q And would that also be true with the taxes?

7 A Yes.

8 Q During this period of time that you were
9 going through the documents up until the point that
10 Ms. Williams took them out, was a period of how long?

11 A I'm not sure. Half hour, 45 minutes,
12 somewhere in that area. You may have asked me -- I'm
13 not sure what time -- it wasn't long.

14 MR. PEDOWITZ: I think you said about half
15 an hour.

16 BY MR. CHERTOFF:

17 Q Your understanding was that eventually they
18 were going to get to some private lawyer's office?

19 A Yes.

20 Q In the course of performing that
21 analysis -- let me withdraw the question.

22 Either before you performed -- let me

1 withdraw the question again.

2 At any point earlier in the day, did you do
3 any legal research concerning the movement of these
4 documents, the Clinton personal papers that were in
5 Mr. Foster's office?

6 A No.

7 Q At the time that you performed the
8 procedure of going through the documents with
9 Ms. Williams to allocate those that would be removed,
10 did you ask anybody to look at the Presidential
11 Records Act?

12 A I don't remember doing that, no.

13 Q Did you understand that there are legal
14 restrictions on the ability to remove official papers
15 that are generated by the President or the White
16 House to other places?

17 A There is a Presidential Records Act.
18 There's a general -- there are general principles in
19 connection with that, but I understood that, yes.

20 Q And would you agree with me that one of
21 your functions as White House counsel is to advise on
22 the legal requirements of the Presidential Records

1 Act?

2 A That's correct, and one of my staff members
3 was familiar with that Act.

4 Q And who was that?

5 A Steve Neuwirth.

6 Q Did you ask Mr. Neuwirth to come in and
7 give advice concerning whether any of these documents
8 could be moved under the Presidential Records Act?

9 A No.

10 Q There's been some testimony -- I'm not
11 saying I'm literally repeating it, but my
12 recollection of yesterday's testimony is that you
13 identified a number of instances in which you were
14 careful to have some research done or at least some
15 extended legal research done concerning the
16 applicability of privileges and the law of privileges
17 concerning certain documents. Is that a fair
18 characterization?

19 MR. PEDOWITZ: I don't think he said
20 anything about having research done about privilege
21 issues during that period of time. I think he
22 indicated that he had a knowledge of certain of the

404

1 principles as applied to executive privilege during
2 that period of time.

3 BY MR. CHERTOFF:

4 Q Didn't you indicate that when the note was
5 found on the 26th that you asked some research be
6 done about privileges?

7 A Yes -- this is the Burton request after the
8 note was found and I think I asked Neuwirth to go
9 look at some issues concerning privileges or the
10 obligation to produce or things like that.

11 So we did some cursory research. I
12 shouldn't say cursory. He did some research with
13 respect to those issues, although, as I said, I had
14 made a determination that, from my own knowledge of
15 the law, what I believe to be the law, and also the
16 proper thing to do in this situation, was this note
17 was going to be turned over.

18 Q And on the 22nd you certainly had
19 discussions with people in the White House counsel's
20 staff as well as other people in the White House
21 concerning the sensitive and complicated legal
22 questions, privileged questions that arise in dealing

1 with presidential documents; right?

2 MR. PEDOWITZ: Objection to the form.

3 THE WITNESS: No. I don't remember any
4 such discussions.

5 BY MR. CHERTOFF:

6 Q You paid attention to the privilege issue
7 in deciding how the -- in the matter of access of the
8 law enforcement authorities to the documents would
9 take place; right?

10 A I paid attention to privileged issues, yes.

11 Q When you made arrangements to have
12 documents taken out of Mr. Foster's office with the
13 expectation that they would ultimately be removed to
14 a private attorney's office, you did not conduct any
15 analysis of any legal restrictions on that, however?

16 A That's correct.

17 Q And you didn't postpone that actual
18 movement of the documents until such time as that
19 question should be considered?

20 A It wasn't necessary. There's no -- you're
21 suggesting that there's some sort of substantial
22 legal issue here with respect to it. There was

406

1 none. I mean, it's silly.

2 Q There is no legal restriction on the
3 ability of someone to remove presidential documents
4 from the custody and control of the White House?

5 A There's no legal restriction on the ability
6 to remove personal documents of the President, to
7 send it to the President and his personal lawyers.
8 There's no legal restriction.

9 Q Weren't these official documents?

10 A No, they were personal records being used
11 for official purposes, and I don't believe there's
12 any legal restriction on moving them.

13 Q Were they commingled in the files of
14 official documents?

15 A I don't know what specific document you're
16 referring to.

17 Q In the files, did you check to see whether
18 commingled in particular files were official
19 documents?

20 A We sent over -- we did check to see whether
21 we were sending over personal records as opposed to
22 White House counsel records. And we made an effort

1 to send over solely personal records. And actually,
2 one record was sent over and returned.

3 Q Which record was that?

4 A A record with respect to the residence, a
5 residence file.

6 Q Who returned it?

7 A I think Ms. Williams returned it.

8 Q When did she return it?

9 A Sometime thereafter.

10 Q When thereafter?

11 A Within a matter of days.

12 Q Before the documents went to Williams &
13 Connolly?

14 A I don't know. I don't remember at this
15 point.

16 Q But you're quite sure Ms. Williams returned
17 the document?

18 A No, I'm not quite sure Ms. Williams
19 returned the document. I believe Ms. Williams
20 returned the document. A residence file was
21 returned. There was a file that was returned because
22 we were making an effort to send over solely personal

1 documents which had been used -- yes -- which were in
2 the White House counsel's office because there was an
3 official purpose.

4 That purpose was now over. Vince Foster
5 was dead. We weren't going to be using those files
6 now so we sent over the personal records to the
7 Clintons and their personal attorneys.

8 Q Did Ms. Williams tell you who had made the
9 decision to return that document?

10 A No.

11 Q Did she say anything about how she came to
12 return it?

13 A It's just some statement, merely that this
14 concerns the residence. It's not really a private
15 file, although the Clintons live in the residence --

16 MR. PEDOWITZ: Can we take a break for a
17 minute.

18 MR. CHERTOFF: Can I hear the answer to the
19 question.

20 THE WITNESS: And consequently the
21 documents should remain in the White House counsel's
22 office.

1 BY MR. CHERTOFF:

2 Q Can you remember any other discussion with
3 Ms. Williams concerning this occasion when she
4 returned the document?

5 MR. PEDOWITZ: I really would like to talk
6 to my client for a moment and he'll answer the
7 question.

8 (Witness conferred with counsel.)

9 BY MR. CHERTOFF:

10 Q You've had an opportunity to consult with
11 counsel?

12 A Yes.

13 MR. CHERTOFF: Can I get the last question
14 read back.

15 (The reporter read the record as requested.)

16 THE WITNESS: As I indicated in my
17 testimony, look back at the record, I'm not certain I
18 even had this discussion with Ms. Williams. I'm not
19 positive. It's either Ms. Williams or Mr. Neuwirth I
20 had a discussion with.

21 I remember a discussion with regard that a
22 residence file, a file concerning the residence

410

1 should remain in our office rather than be sent over
2 as part of the Clinton personal files to the Clintons
3 and their new personal attorneys. And I had the
4 discussion either with Ms. Williams or with
5 Mr. Neuwirth. It was one of them. That's what I
6 remember.

7 BY MR. CHERTOFF:

8 Q This conversation occurred after the
9 documents had been taken out on the 22nd; correct?

10 A Yes.

11 Q And it's very hard to confuse Mr. Neuwirth
12 and Ms. Williams physically, isn't it?

13 A Of course, but they're both -- they're both
14 involved in the subject matter. The reason
15 Mr. Neuwirth is involved in the subject matter is
16 because Mr. Neuwirth was working on matters
17 concerning the residence. He had been working with
18 Mr. Foster concerning matters of the residence and he
19 was working with Ms. Williams who was involved in
20 matters concerning the residence. And one of them
21 said that file should remain in the White House
22 counsel's office.

1 Q Who brought the file --

2 A So why is that so strange, that it's hard
3 to confuse Ms. Neuwirth and -- Ms. Williams and
4 Mr. Neuwirth?

5 Q Who brought the file back?

6 A That I don't remember. Either Ms. Williams
7 or Mr. Neuwirth, even though they're quite distinct,
8 one of them brought the file back.

9 Q Where did they bring it back from?

10 A I don't know because I wasn't there when
11 the file was brought back, and I'm not sure it was
12 brought back from the residence or from
13 Ms. Williams's office where this file was. It was a
14 residence file, and we made a determination that it
15 was not a personal file that we should send to the
16 Clintons' personal lawyers.

17 That's all that happened here. We came
18 across a residence file which was returned to
19 Mr. Foster's office for Mr. Neuwirth to work on in
20 the future, just like Mr. Foster had worked on
21 residence matters with Ms. Williams and Mr. Neuwirth.

22 Q It was originally a Foster file; right?

1 A No, it is a White House residence file on
2 which Mr. Foster worked on.

3 Q Which was in his office?

4 A I'm not positive it was in his office. It
5 was either in his office or Ms. Williams's office but
6 it was a matter he worked on.

7 Q But it originated in Mr. Foster's office?

8 A I'm not 100 percent positive of that. It
9 may have originated in Mr. Foster's office and gone
10 out and was returned or it may have been in
11 Ms. Williams's office and was put into Mr. Foster's
12 office, but it was a residence file. There was a
13 discussion as to whether this is a personal file that
14 should go to the Clintons and their new personal
15 attorneys and it was determined that it was not a
16 personal file. It was a file that should stay in the
17 White House counsel's office so we could continue to
18 work on that matter.

19 Q Were you present in April 1994 when
20 Mrs. Clinton gave a press conference in the state
21 dining room of the White House?

22 A No.

1 Q When did you leave as White House counsel?

2 A April 5th, 1994.

3 Q Either in the period before you left or
4 after you left, were you involved at all in assisting
5 her in preparing for this press conference to the
6 extent that it involved matters having to do with the
7 Vincent Foster documents?

8 A No.

9 MR. PEDOWITZ: What is the day of the press
10 conference?

11 MR. CHERTOFF: April 22, 1994.

12 BY MR. CHERTOFF:

13 Q I'm going to read you so we don't have an
14 issue about completeness, two questions and answers
15 from the press conference, and then I'm going to ask
16 you a question about one section of it. This is from
17 page 11, Z106.

18 "Question: Can you clarify for us what
19 documents were removed from Vince Foster's office
20 after he died and why they were there in the first
21 place?

22 "Mrs. Clinton: Mike, I can tell you what

1 I know which is that I did not know that Vince had
2 any of the documents related to our personal business
3 in his office until after his death. What I believe
4 he was doing with them was serving as a coordinator
5 among private lawyers and accountants and certain
6 government officials, like the Office of Government
7 Ethics, with respect primarily to our blind trust
8 because there were all these questions that had to be
9 answered and he was kind of a coordinator. The
10 private lawyers would talk to him and the Office of
11 Government Ethics people would talk to him. I think
12 that's why he had any documents of a personal nature
13 in his office at the time of his death.

14 "Question: And to follow, why did your
15 chief of staff, Maggie Williams, why was she among
16 those who removed these documents from his office?

17 "Mrs. Clinton: I don't think that she did
18 remove any documents. I think that what happened is
19 that after Mr. Nussbaum reviewed the documents and
20 after he did so -- as I recall, I was not here, I was
21 in Arkansas -- but I believe that that was done in
22 the presence of officials from the Park Police and

1 maybe some other agencies. Then Mr. Nussbaum
2 distributed the files according to whom he thought
3 should have them. There were files related to
4 ongoing work in the counsel's office that needed to
5 be passed on to other lawyers. There were personal
6 files of Vince's that needed to go to his family, and
7 there were these personal files of ours that went to
8 our lawyer."

9 Now, having read that, which I think is the
10 complete question and answer relating to this topic,
11 let me ask you this: Is it your understanding that
12 Mrs. Clinton did not know that Mr. Foster had any
13 documents related to the Clintons' personal business
14 until after his death?

15 A I have no reason to dispute that
16 statement. I know nothing -- there's nothing in my
17 knowledge which contradicts that statement by her.

18 Q Do you agree that Maggie Williams did not
19 remove any documents from Mr. Foster's office?

20 A No. Maggie Williams participated with me
21 in the transfer of documents from Mr. Foster's
22 office.

1 Q At any time after July 22nd -- let me
2 withdraw the question.

3 At any time on or after July 22nd to the
4 present day, have you had a conversation with
5 Mrs. Clinton concerning the files that were in
6 Mr. Foster's office and how they were handled?

7 A After the -- after the controversy arose,
8 many, many months later, after the Whitewater thing
9 erupted in the press, this search in a dark room for
10 a black cat that isn't there, after that occurred and
11 in connection with that, the removal of the
12 documents, the transfer of the documents, personal
13 documents, including a Whitewater file became such a
14 cause celebre.

15 This was December of 1993, early January
16 1994, and there was some criticism of me in the
17 papers for transferring or removing documents out of
18 Foster's office and sending it to the personal
19 attorneys for the Clintons. I remember one brief
20 conversation in passing with Mrs. Clinton in which
21 one of us alluded to -- made some allusion to the
22 newspaper stories about how what a terrible act this

1 was of transferring personal files, a Whitewater file
2 particularly, to the residence of the Clintons.

3 And I remember her saying to me something
4 like -- because these stories had been running now
5 for a couple of days, that she had been at a party
6 last night, at a function in the White House, and she
7 had run into some lawyers that she knew. And they
8 said to her that's exactly the way -- that's the
9 right thing for a lawyer to do. That's exactly the
10 way a lawyer should act, something like that.

11 They conveyed it to her and she just was
12 passing on that comment to me. It was very brief and
13 in passing. That's the only conversation I
14 remember. I think I laughed in response and said I
15 agreed with those sentiments. It was like a passing
16 comment, like that. That's the only conversation I
17 remember to this day with respect to this matter with
18 her.

19 Q From July 22nd, 1993 to the present day,
20 have you ever had a conversation with the President
21 concerning the handling of the documents in
22 Mr. Foster's office?

1 A No.

2 Q Directing your attention to that period in
3 December or January of '93 or '94 you just testified
4 about a moment ago, did you have discussions with
5 Mrs. Clinton concerning whether any of the files that
6 had originally been in Mr. Foster's office should be
7 supplied to the Independent Counsel?

8 A There was no Independent Counsel.

9 Q Well, there was in January of 1994.

10 A Middle of January. I recall discussions in
11 which, should those documents be supplied to the
12 Justice Department. That's what happened. I mean,
13 there was no -- and we all agreed that if the Justice
14 Department was conducting an investigation with
15 respect to the Whitewater matter, they definitely
16 should be supplied to the Justice Department and they
17 were supplied to the Justice Department.

18 Q What position did you take in that
19 discussion?

20 A I favored them being supplied to the
21 Justice Department.

22 Q At any point, did you oppose them being

1 supplied to the Justice Department?

2 A I don't recall ever being opposed to the
3 documents being supplied to the Justice Department.
4 I did oppose the documents being supplied to The
5 Washington Post, but I didn't oppose them being
6 supplied to the Justice Department.

7 Q Who else participated in the discussions
8 about how they should be supplied to the Justice
9 Department?

10 MR. PEDOWITZ: Is there any issue here
11 about scope?

12 THE WITNESS: This is a whole other area.

13 MR. CHERTOFF: The Resolution clearly
14 comprehends a broad scope. I think in terms of this
15 set of hearings, subsequent discussions about the
16 disposition of the file that was removed seems
17 relevant to state of mind.

18 MR. BEN-VENISTE: Subsequent to 1993?

19 MR. CHERTOFF: Yes.

20 MR. BEN-VENISTE: I don't quite understand
21 that. I mean, the objection is that counsel has not
22 had the opportunity to prepare to answer questions

1 regarding the Whitewater investigation as distinct
2 from the Foster papers handling aspect of our
3 investigation. I think that's a reasonable point
4 from a standpoint of comity. I believe this witness,
5 as well as others, was advised of what the purpose of
6 our deposition inquiry would be.

7 MR. CHERTOFF: I'm not looking to get into
8 this a lot. I just want to know who else
9 participated in the conversation.

10 MR. BEN-VENISTE: The question of whether
11 we get into this a lot or a little, Mike, is
12 something you and I have discussed before, and I
13 don't think it really bears on the issue of whether
14 witnesses have been prepared to get into this related
15 but different subject matter.

16 MR. PEDOWITZ: I also am concerned a bit
17 about whether or not there has been a waiver of
18 privilege with respect to this particular issue. We
19 are talking about counsel discussions --

20 MR. CHERTOFF: That's why I wanted to find
21 out who was present. Clearly who was present in the
22 discussion can't possibly implicate waiver.

1 MR. PEDOWITZ: That's correct.

2 MR. CHERTOFF: I should note for the
3 record, if there was a privilege, it's probably been
4 waived already because we've gotten the content.

5 MR. PEDOWITZ: It depends on how far you go
6 with this.

7 MR. CHERTOFF: Let's at least get the
8 participants because that clearly can't be
9 privileged.

10 MR. BEN-VENISTE: My only concern would be
11 again, from the standpoint of fairness to the witness
12 and his counsel, whether they have been prepared to
13 answer questions on events that are substantially
14 different from those associated with this aspect of
15 the hearing.

16 MR. CHERTOFF: Well, since the hearing
17 involves the handling of the documents that were in
18 Vincent Foster's office and since we're discussing
19 the disposition of documents that were at some point
20 in Vincent Foster's office, I'm not going to spend a
21 lot of time on this because I do respect the comity
22 issue but on the other hand, I don't think asking

1 that anyone can claim being sandbagged or this matter
2 is completely unrelated to the subject matter of the
3 hearings since I am indeed asking questions about
4 decisions concerning the handling of the documents
5 that were in Vincent Foster's office.

6 MR. PEDOWITZ: We've answered your
7 questions up to now and I'm prepared to have him
8 answer the next question, but I would like to assess
9 further questions --

10 MR. CHERTOFF: We'll go question by
11 question.

12 BY MR. CHERTOFF:

13 Q Who was present in these discussions?

14 A There were varying discussions in late
15 December and in early January -- late December '93
16 and early January '94 when the Whitewater issue arose
17 in the press and the Department of Justice commenced
18 an investigation, or indicated it was conducting some
19 sort of investigation.

20 People who participated in these
21 discussions at that time -- and there were a number
22 of discussions -- were myself, the President, the

1 First Lady, my deputy at that time, Joel Klein; David
2 Kendall; and also people -- like Stephanopoulos,
3 Gergen, McLarty. I mean, there was not one
4 discussion. There were a number of discussions.
5 Those people are who come to mind right now in the
6 White House and outside the White House -- David
7 Kendall is not in the White House -- who participated
8 in such discussions.

9 Q Did the First Lady express an opinion about
10 whether these documents should be turned over to the
11 Justice Department?

12 MR. PEDOWITZ: This is where I start to
13 feel that I don't have any clear instructions from
14 the White House on the extent to which there has been
15 waiver on these issues, and I do also agree with
16 Mr. Ben-Veniste's concern about the extent to which
17 we have not had an opportunity to spend time
18 preparing on this particular issue, or certainly I
19 had no expectation that we were going to get into
20 this period of time and these types of issues.

21 Mr. Nussbaum has already testified, as you
22 know, that these documents were turned over. His

1 advice was they should be turned over, and I have
2 some concern about propriety of going into individual
3 conversations with the First Family on these
4 particular issues. I don't know where it's going and
5 the extent to which there might be some argument that
6 there's been waiver, and I just don't feel it's
7 appropriate for us to be answering these questions at
8 this particular moment.

9 MR. CHERTOFF: Okay. Why don't we take a
10 break now. Let me give you the documents that I've
11 indicated I would give you to review and then when we
12 resume, I don't think I'll have a lot of questions,
13 but essentially I'm going to give you --

14 MR. PEDOWITZ: Mike, except obviously that
15 you wanted to ask an initial question on this issue
16 and one more, do you have any other subject area that
17 you want to go into now other than these memoranda,
18 or are we done except for those?

19 MR. CHERTOFF: We're basically done except
20 for -- let me say this, as you probably detected in
21 the course of sitting in here with you now for a day
22 and a half but last year, if something crops up that

1 triggers a synapse, I'm reserving the right to go off
2 and pursue it. I don't want to have to replicate the
3 argument about preparation.

4 I don't want to mislead you. It's my
5 intention basically now to focus on these issues, but
6 if something comes to mind, I'm not going to restrict
7 myself from asking it. I don't think it's a
8 substantial amount of time.

9 MR. BEN-VENISTE: Let's go off the record.

10 (Discussion off the record.)

11 (Whereupon, at 12:00 p.m., the deposition
12 was recessed, to be reconvened at 12:45 p.m. this
13 same day.)
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1 AFTERNOON SESSION (1:10 p.m.)

2 Whereupon,

3 BERNARD W. NUSSBAUM

4 resumed the stand and, having been previously duly
5 sworn, was examined and testified further as follows:

6 MR. CHERTOFF: I'd like to mark this as BN
7 1, and it's Bates numbers F149 and F150.

8 (Exhibit BN 1 identified.)

9 MR. CHERTOFF: I'm marking F149 and 150 as
10 BN 1 because we furnished the counsel a redacted
11 version of the second page where we eliminated that
12 portion of this document which did not consist of
13 what was actually personally observed or heard by the
14 person who prepared the document from Mr. Nussbaum.

15 Other than that, just for the record, we
16 furnished over the break, of I guess a little over an
17 hour a criminal incident report dated 7/21/93,
18 Bernard Nussbaum, which does not seem to have a Bates
19 number on it, and another one dated -- which begins
20 on 7/27/93 at approximately 21:15 hours. Both of
21 these are Park Police documents.

22 We also furnished an FBI report with Bates

1 numbers FBI 21 through FBI 23 and a White House
2 document with Bates numbers Z523 through Z530. And
3 this was pursuant to our earlier discussion, which we
4 were going to provide certain documents that recorded
5 either interviews of Mr. Nussbaum by law enforcement
6 authorities or reports or memorializations by
7 individuals who had had conversations with
8 Mr. Nussbaum about those conversations. And I
9 understand Mr. Pedowitz wants to put something on the
10 record.

11 MR. PEDOWITZ: Yes. I very much appreciate
12 your having supplied us with these documents, and I
13 look forward to receiving much more information
14 before the hearing in order to permit us to do what
15 we have just done, namely to get a sense as to some
16 of the things that have been reported that
17 Mr. Nussbaum said and, frankly, we find this very
18 valuable and very useful information.

19 I think it would serve little purpose
20 today, and I think it would be extremely
21 time-consuming to go through these documents line by
22 line and point out what is agreed to. And what is

1 not agreed to, and you have much of that, in any
2 event, on the record because it's clear, that there
3 have been many references to portions of these
4 documents or information contained in them, and
5 you've received either agreement or disagreement with
6 many of the statements that are contained in here.

7 What I would like to just observe for the
8 record for a moment is it is clear, I think, when one
9 reads the documents that you've supplied to us that
10 Mr. Nussbaum did disclose the fact that Maggie
11 Williams, Patsy Thomasson and he had been in the
12 office on July 20th and did a cursory review of that
13 office.

14 And frankly, up until the time I had an
15 opportunity to read these documents, I was wondering
16 whether or not that had happened based on the way the
17 questions had been asked. I think that's quite clear
18 that that was disclosed. Another thing that I think
19 emerges from a reading of these documents is the
20 limited nature of the inquiry of the various
21 investigators who were asking questions of
22 Mr. Nussbaum at various stages; that is, to the

1 extent there has been any suggestion or implication
2 that something might have been left out here or
3 there, it's also perfectly clear, I think, when one
4 reads these documents, that the law enforcement
5 people were not as thorough as you have been or that
6 Rick will be in exploring these issues and getting
7 into them in great depth.

8 They had a limited focus. I think it was
9 an appropriate focus at the time but it certainly was
10 not as broad reaching as the inquiry that you all
11 have conducted.

12 Third, I would observe that there are
13 errors in here, as one would expect. That is, as we
14 commented before, we all have had familiarity with
15 law enforcement reports that are prepared sometimes a
16 few days after an interview has been conducted,
17 sometimes very shortly thereafter, and they do make
18 errors, in part because sometimes they just make
19 errors. Sometimes there are miscommunications; that
20 is, something is said and it's misunderstood by the
21 investigator. And sometimes they just don't get into
22 things in enough depth to understand them. We find

1 evidence of that in virtually, I think, every
2 document here.

3 Even Adams, I think, who is obviously a
4 very careful lawyer, has made some errors in
5 translation of things that were said to him and it
6 looks like I suspect this report -- there's no date
7 on it -- it appears to have been prepared after the
8 note was found, though I can't be absolutely certain
9 of that, but the fact that there's a focus on the
10 briefcase would suggest to me that it may well have
11 been prepared after the note was found.

12 Another observation that I'd make is that
13 in the Adams report, none of this Sturm und Drang
14 that we have grown accustomed to in various newspaper
15 reports and some of the questions about things that
16 might have been said by various individuals at
17 various times.

18 Again, I understand that the record is not
19 complete. I don't have a complete record of what's
20 been said by various witness, and I have not been
21 supplied as yet with any handwritten notes of Phil
22 Heymann, and I recognize that maybe there are some

1 more additions to some of the things that you
2 questioned Mr. Nussbaum about.

3 But rather than -- we do recognize that we
4 will have an opportunity to prepare testimony. I
5 very much hope that you will supply us as much as you
6 can about what various witnesses have said concerning
7 statements that have been made by Mr. Nussbaum during
8 this period, essentially July 20 through July 28, so
9 that we do have an opportunity to address them during
10 the hearing and confront this.

11 It is not going to be an adversarial
12 hearing in the sense that any of the four of us would
13 have an opportunity to cross-examine any of these
14 witnesses. And in fairness, I would very much hope
15 that we would have an opportunity to hear what the
16 Park Police have said about the events which
17 Mr. Nussbaum participated in, the FBI or Justice
18 Department people. And, indeed, the White House
19 people to the extent that they may have different
20 recollections.

21 It would be very useful to have that
22 information so we can, in fairness, confront this and

1 perhaps make some effort at getting to the bottom of
2 some of the factual discrepancies that I think you're
3 going to see in this record.

4 MR. CHERTOFF: I'm not going to go line by
5 line. There are some things I want to address in
6 these. And in terms of the issue of what can be
7 provided in advance, we'll take that up at a later
8 point. And I indicated that maybe the way to do that
9 is to have you write a letter.

10 I observed to you, as you get beyond the
11 issue of what people have reported regarding prior
12 statements into the larger question of what other
13 witnesses are saying about what Mr. Nussbaum may have
14 done or participated in, you are, in effect, pulling
15 the entire record of the investigation into it.

16 I think it's very unlikely the committee
17 will agree to simply give Mr. Nussbaum an opportunity
18 to look at the entire record of the investigation.
19 And I must also say, and I want to make it clear,
20 that it's by no means, to my knowledge, the view of
21 the people that I'm dealing with, that Mr. Nussbaum
22 is a focal point of this.

1 To the extent there are discrepancies, it
2 may well be people will infer that Mr. Nussbaum's
3 version is the more accurate version. And so any
4 notion of providing information that's predicated on
5 the assumption that there's a target here and there
6 are other witnesses misunderstands, I think, where
7 we're going. That being said and I recognize that we
8 have to get on with business, I think we can address
9 these issues later.

10 MR. PEDOWITZ: I very much appreciate your
11 comment; that is, that Mr. Nussbaum is not a focal
12 point of this matter or certainly not necessarily
13 one. I very much agree that he oughtn't be, but
14 based on the press reports that I've seen to date and
15 some of the questions that have been asked about what
16 some people may have said, I expect that, at a
17 minimum, there may be some press focus on what he
18 said or what he did. And as a consequence, in
19 fairness, I would like to have as much information as
20 I can get so we can prepare testimony which, I think,
21 meets any suggestions that he may not have conducted
22 himself in an entirely appropriate manner.

1 I know that the Resolution is focused on
2 whether or not any improper conduct was engaged in.
3 We would like to demonstrate that there was not. And
4 the more information that we have about what other
5 people say Bernie said, the better able we are, I
6 think, to address all of the issues that may be
7 raised in this area.

8 EXAMINATION (Continued)

9 BY MR. CHERTOFF:

10 Q Mr. Nussbaum, let me now direct your
11 attention to the period of time, the week of July
12 26th. I think there was a point in time earlier
13 where we had begun to question on this issue, and I
14 want to ask whether you recall being interviewed on
15 July 30th by FBI agents regarding the handling of the
16 note on July 26th and thereafter, in Mr. Foster's
17 office.

18 A I do recall being interviewed by FBI
19 agents.

20 Q And you've now had an opportunity to review
21 FBI 21 to 23, which is their report of that
22 interview.

1 Is there anything, as you look at this
2 document today that you can identify to us as either
3 incorrect or a fact that you told him about that is
4 not reflected herein.

5 MR. PEDOWITZ: Can you read the question
6 back, please.

7 (The reporter read the record as requested.)

8 MR. PEDOWITZ: I think if we're going to
9 answer that question, we're going to have to go line
10 by line. That is, Mike, even in an hour it's
11 difficult to go through these documents with that
12 type of care and be able to catalogue all of the
13 things that we may find to be problematic with any
14 particular document.

15 I'm not suggesting to you that this
16 particular one is loaded with problems, but I think
17 it's going to require some considerable care to
18 answer that question.

19 BY MR. CHERTOFF:

20 Q Let me ask you this question, then: I want
21 to direct your attention to the second page of the
22 document, which is FBI 22, and in particular, the

1 first full paragraph which begins "Nussbaum
2 advised."

3 Now, that follows a paragraph which talks
4 about how you and Mr. Neuwirth discussed the fact
5 that Mr. Neuwirth showed you pieces of paper found in
6 Mr. Foster's briefcase. And in the paragraph in
7 question, beginning "Nussbaum advised" it discusses
8 activities the balance of that day.

9 And I want to read it as follows into the
10 record. "Nussbaum advised that after assembling the
11 note and reading its contents he (Nussbaum) left his
12 office to go find White House chief of staff Mack
13 McLarty."

14 Now, that's correct, isn't it?

15 A Yes.

16 Q "Nussbaum was told that McLarty was in
17 Chicago with the President and Nussbaum then arranged
18 to speak with McLarty via telephone."

19 That's correct?

20 A No. You see, because what you're doing,
21 this is a condensation of certain events that took
22 place, but not every event that took place.

1 Q It's a summary.

2 A It's a summary, but it leaves out certain
3 things, which may or -- it leaves out walking into
4 McLarty's office, saying I want to see Mack -- oh,
5 Mack's in Chicago. Burton -- in fact, Burton
6 probably told me Mack was in Chicago. Bill, I want
7 you to come up and see something. Then a whole
8 series of events starts occurring. What this is
9 doing is condensing -- obviously my aim was get to
10 McLarty, the chief of staff -- and I to get to
11 McLarty by telephone, but this is not purporting to
12 be a second-by-second, minute-by-minute description
13 of every event. This is an FBI 302 form, which is
14 sort of condensing into a very short form certain
15 significant events.

16 Q And it's based on what you were telling the
17 agents?

18 A It was based on -- I don't even know -- you
19 may have the agent's original notes. Maybe that's
20 all that's reflected in their notes, but I don't know
21 the particular questions that were asked. Again,
22 they may not have done it the way you just did it, a

1 very step-by-step precise process.

2 Q You were there in the interview; right?

3 A Correct.

4 Q How did they do it?

5 A I don't remember. I don't remember. I
6 remember that --

7 Q Did they ask you step-by-step questions or
8 did they ask you a narrative?

9 A They asked me what happened. I don't
10 remember how they asked it. I doubt if they asked
11 step-by-step questions, because if they asked
12 step-by-step questions, they would have gotten a
13 step-by-step answer. If they asked what happened in
14 a general way, what did you do, I gave them a general
15 description, which is then reflected in here. I gave
16 them key important events.

17 Q What you thought were important?

18 A That's correct.

19 Q Did you tell them on the night of the 26th
20 you brought Mrs. Clinton into the office to tell her
21 that the note had been found?

22 A I don't know if I told them that or not. I

1 guess if I had told them that, it would probably be
2 in there. If they asked me did Mrs. Clinton come in
3 to see the note, I would have told them that. That
4 is -- that in the scheme of things is an
5 insignificant event. It's an immaterial event.
6 She --

7 Q Was it your judgment on the 26th -- rather
8 on the 30th when you were talking to the agents, that
9 that was an immaterial event that didn't need to be
10 disclosed?

11 A No. It's -- if somebody asks about did
12 Mrs. Clinton see the note on the 26th, obviously you
13 tell the truth. But if somebody says will you tell
14 us basically what, you found the note, what you
15 did -- that is not an important event with respect to
16 this thing.

17 Mrs. Clinton briefly came in, looked at the
18 note briefly, probably didn't read it, had a huge
19 emotional reaction and walked out. Why is that a
20 significant event in terms of finding a note here? I
21 talk about Mrs. Clinton almost breaking down into
22 tears. What's so important about that to the FBI

1 agent?

2 On the other hand, if he wants to know
3 everything that happened, every minute, just like you
4 want to know, he could ask it and I would tell it to
5 him. There's nothing to hide.

6 Q But in giving your rendition of the --
7 narrative rendition of what happened, you didn't
8 mention Mrs. Clinton, to your knowledge?

9 A I don't remember -- I don't remember
10 whether I did or not. That's my answer because it's
11 not that meaningful a thing.

12 Q Let me direct your attention to the
13 interview that took place on July 27th, I believe
14 that was with Officer Megby. This was after -- this
15 was on the same day that you had seen Attorney
16 General Reno, and you had indicated to her and
17 Mr. Heymann that the note had been located. And I
18 want to direct your attention down to the third
19 paragraph here which I'll read into the record.

20 "According to Mr. Nussbaum, on Monday
21 7/26/93 he directed one of his assistants,
22 Mr. Stephen Neuwirth, enter Mr. Foster's office and

1 take a detailed inventory of the files and material
2 in there. In a briefcase known to be in the office
3 and thought to be empty, he found the torn pieces of
4 a handwritten page. The scraps were dumped out and
5 then taken to Mr. Nussbaum's office where they were
6 assembled and Mr. Nussbaum was notified.
7 Mr. Nussbaum then went through the notifications
8 procedure to Bill Burton, to the chief of staff and
9 finally to the President today, 7/27/93, at about
10 17:00 hours when he returned to Washington, D.C. and
11 about 18:00 hours, today's date, to the family of the
12 Fosters when they returned to the city."

13 Did you mention to the officer who was
14 interviewing you on the 27th that on the preceding
15 day you had brought Mrs. Clinton in and told her
16 about the note?

17 A I don't know whether I did or not. I
18 assume if I would have, he probably would have put it
19 in here. I don't know whether I did or not because I
20 don't think he asked me to go through a
21 step-by-step --

22 Q I understand in both of these interviews,

1 people were just asking you to give a narration where
2 you would select the facts. Did you make a
3 deliberate decision to omit the fact that the First
4 Lady had been in there -- had been asked to come in
5 there and told about the note the night before?

6 A I did not make a deliberate decision to
7 omit that fact. I made a deliberate decision to
8 provide what I considered to be the salient facts or
9 the relevant facts. The fact that Mrs. Clinton took
10 a brief look at the note and had an emotional
11 reaction and never read the note, and I never
12 discussed the note with her, I never talked about the
13 substance of the note or anything like that, did not
14 seem to me at that point to be a salient fact. And I
15 still don't think it's a salient fact. This harping
16 on it sort of amazes me a little bit.

17 MR. PEDOWITZ: Can I have just one second
18 here.

19 (Witness conferred with counsel.)

20 (Pause.)

21 BY MR. CHERTOFF:

22 Q On the 28th of July, you had a meeting with

1 other members of the counsel's office concerning what
2 had transpired regarding Mr. Foster's documents.

3 A I had a meeting of the counsel's office --
4 I think I just had my normal staff meeting, in which
5 we may have discussed what happened regarding
6 Mr. Foster's office.

7 Q And Cheryl Mills was a member of your
8 staff?

9 A Correct.

10 Q And she was what, an assistant counsel to
11 the President?

12 A She was an associate counsel to the
13 President.

14 Q Just briefly, what's her background?

15 A She's an enormously able and bright lawyer
16 who worked, I think, for Hogan & Hartson; I think
17 helped in the campaign, too. She was one of the
18 first persons hired on the staff by Vince and
19 myself. She worked in Little Rock for a while during
20 the transition, and she's a remarkably able person.

21 She does a lot of -- in the White House
22 counsel's office, she dealt with travel issues, gift

1 issues, various ethics type of issues, but she was
2 also a bit of a troubleshooter. She can do virtually
3 anything.

4 Q And your understanding is she came from out
5 of government, she was hired from her job as a
6 private lawyer; right?

7 A Yes.

8 Q And she worked in the campaign?

9 A I'm not positive of that. She certainly
10 worked in the transition.

11 Q Do you know how she came to your attention
12 in terms of hiring her?

13 A I met her in Little Rock. She was
14 assisting Vince, as we were creating the counsel's
15 office.

16 Q She's not from Little Rock though?

17 A No, she's not from Little Rock. I
18 believe -- I know she was assisting Vince. He was
19 the one who introduced me to her and we discussed
20 whether we should make her part of the regular
21 counsel's staff, and we did, to our everlasting
22 thanks.

1 Q Just to go through -- a couple of things I
2 want to ask you about on this memo, which comes from
3 the White House, produced from the files of Cheryl
4 Mills, and I'm giving you a copy of Z523 to 530 so we
5 can direct our attention to it.

6 On July 28, you indicated, in the course of
7 this meeting with the staff, that there were matters
8 you were dealing with arising out of Vince's death
9 that you couldn't discuss. What were those matters?

10 A You know, I don't know. It may have
11 been -- this is 7/28. I'm speculating. We turned a
12 note over on the 27th, late in the evening on the
13 27th. I had this practice of normally being very
14 open with my staff and just telling them everything
15 that had gone on, including virtually the most
16 sensitive things, although some things I didn't tell
17 the staff. But that was my practice, to sort of
18 treat them as partners in a law firm, so normally, I
19 would say virtually everything that was going on, not
20 always, but virtually.

21 I think what I'm referring to here -- and
22 this is speculation -- this is the morning after the

1 27th. We had turned over the note the night before.
2 We had found the note. That was being closely held.
3 Now the Justice Department had it. It was clearly --
4 and we had this dialogue with the Justice Department
5 from the time we turned over the note to the Park
6 Police for a few days thereafter, that this should be
7 kept -- we shouldn't make any public statement.

8 We were sort of pressing, as with I
9 indicated yesterday, thinking wanted to get this out
10 because we knew it was going to get out, and we might
11 as well get it out. But they didn't want us to do
12 it, and we adhered to their request when they were
13 conducting the investigation or the inquiry, the
14 factual inquiry after the note was found.

15 So I think on this morning, I probably did
16 not tell the rest of the staff that we had found a
17 note. That's what I think it was.

18 MR. PEDOWITZ: You may want to read more --

19 THE WITNESS: The next day is different. I
20 understand the next day. The next day is different.

21 BY MR. CHERTOFF:

22 Q Let me direct your attention to the third

1 bullet on that. "Do we have executive privilege
2 vis-a-vis the executive branch? (What right do we
3 have, with regard to documents in our office to
4 assert privilege?) Is it attorney-client privilege?
5 Executive privilege, no executive privilege vis-a-vis
6 Justice Department but there is against independent
7 prosecutor materials on executive privilege)." And
8 it has a little arrow that says Cliff.

9 What was the discussion here?

10 A I don't remember. I don't remember. This
11 is the 28th. Obviously, the search -- the conduct of
12 the search, the finding of the note I knew would
13 focus attention on the search and the conduct of the
14 search and the judgments I made, which I believed in
15 and still believe in with respect to the search.

16 So I was discussing some of the legal
17 issues that I'd thought about and had discussed with
18 some of the members of the staff in the previous few
19 days so I now was bringing it to the general
20 attention, how these issues had arisen, and we should
21 all become more familiar with these issues.

22 Q Was that as an abstract matter or in

1 connection with anticipated work that would have to
2 be done regarding the previous decisions about the
3 documents?

4 A Both.

5 Q Did you say there was no executive
6 privilege vis-a-vis the Justice Department?

7 A No, because I didn't believe that. I think
8 that distinction -- somebody may have drawn that
9 distinction between -- drawn that distinction.
10 Indeed -- I believe there is executive privilege
11 against the Justice Department, to answer your
12 question. I don't believe I said that. If I did say
13 that, I don't believe that now at least and I didn't
14 believe it then.

15 Q Who brought up the notion of an independent
16 prosecutor at this point?

17 A I think it came up in the context of the
18 discussion of whether there was executive privilege
19 because one of the leading cases on executive
20 privilege arises in the context of a so-called
21 independent prosecutor, namely the Watergate
22 independent prosecutor. U.S. v. Nixon is a case

1 which deals with executive privilege.

2 Q At this point, of course, in this case
3 there was no independent prosecutor?

4 A No, but in that case there was sort of. He
5 was really a special counsel. And obviously the
6 court ruled in that case of executive privilege.

7 Q In this discussion, was there discussion
8 about whether an independent prosecutor might be
9 appointed in the future, in connection with which
10 executive privilege would have to be addressed?

11 A No. We were discussing the issue -- the
12 issue that was being discussed here was executive
13 privilege and who it applies against. There was no
14 thought at this time of an independent prosecutor.

15 Q Let me direct you to the next page, 524.
16 And it's headed "Vince's note." Is it fair to say --
17 you've had an opportunity to review this earlier --
18 that this was a description you gave on the 29th to
19 the members of your staff of what had happened in
20 connection with the events with Vince's note?

21 A Yes.

22 MR. PEDOWITZ: It's fair to say these are

1 notes about that.

2 BY MR. CHERTOFF:

3 Q But you did give such a presentation to the
4 staff?

5 A Yeah, that's an interesting thing, COS.
6 Chief of staff didn't want it discussed earlier. It
7 sort of confirms -- actually, I didn't notice that
8 when I gave the prior answer but it confirms, in
9 effect, the prior answer.

10 BY MR. CHERTOFF:

11 Q At this point on the 29th you decided to
12 give members of your staff a briefing based upon what
13 had happened; correct?

14 A Correct.

15 Q And in the portion of this that comes
16 before Monday, you have "Thursday last, search of
17 office with agents, BN went through office 2-1/2
18 hours. FBI, MPS, Justice Steve Cliff, BN, partner
19 from Jim Hamilton rep family separated personal stuff
20 from office documents. BN pulled out from the
21 briefcase files, left briefcase on ground, office
22 locked, no one in on Friday, Saturday Sunday."

1 Did you, in this briefing, mention anything
2 about the transfer of documents up to the personal
3 residence?
4 A Monday --
5 Q In the period between Thursday and Monday.
6 MR. PEDOWITZ: This is a briefing about the
7 finding of the note.
8 MR. CHERTOFF: It speaks for itself.
9 THE WITNESS: Wait, wait, wait a minute.
10 You're talking about Monday --
11 BY MR. CHERTOFF:
12 Q I'm directing your attention to the portion
13 of this note which begins "Thursday (last)" and runs
14 several lines through --
15 A Thursday last, yeah.
16 Q Through office lock -- no one in Friday,
17 Saturday and Sunday and the next line says Monday.
18 A This is -- the part about Thursday is a
19 very brief -- as Mr. Pedowitz just said, the purpose
20 of this briefing, as it appears from this thing -- I
21 have no independent memory at this point -- is about
22 Vince's note. It's not designed to be a description

1 of the office search in its entirety and what
2 occurred after the office search on the 22nd. I'm
3 telling them the story of Vince's note.
4 I start with the office search because the
5 office search didn't discover Vince's note so I talk
6 about the brief -- I talk about the briefcase,
7 "separated personal stuff from office documents,"
8 pulled out -- that's interesting, "separated personal
9 stuff from office documents." I guess I'm
10 referring -- I'm -- and I don't know what I said
11 about that, whether it's Clinton personal stuff or
12 Foster personal stuff. But basically the purpose of
13 this is to tell my staff the story of the search
14 vis-a-vis the note.
15 I talk about pulling -- "BN pulled out from
16 the briefcase files, left briefcase on ground." It's
17 very interesting. It confirms what I said yesterday,
18 what I remember, contrary to what I've been reading
19 in the paper, how I picked it up and turned it over,
20 and did all sorts of other things. "Office locked no
21 one in on Friday, Saturday and Sunday." And then I
22 talk about Monday and the finding of the note.

1 So the whole purpose of this briefing has
2 nothing to do with -- to do in detail at least with
3 the events of the day on Thursday but rather with the
4 events of the day on Monday.

5 Q Were Sloan and Neuwirth present during this
6 briefing?

7 A Probably, yes, I'm virtually certain that
8 they were.

9 Q Directing your attention to where it says
10 "Monday," and as you go down -- let's go down four
11 bullets. "BN walks in. They start reading the
12 note. It doesn't mention suicide; undated. Series
13 of one-line paragraphs, one or two sentence
14 paragraphs. Reflection of his thoughts, public
15 spotlight, views on certain issues, his capacity for
16 job. Nothing is new in it. Startling insight into
17 his mind, can't decide date. Lisa thinks he wrote
18 him sometime before."

19 Next bullet "BN instinct to show it to
20 Mack," that's Mr. McLarty; right?

21 A Yes.

22 Q "Showed it to Bill," that's Bill Burton;

1 right?

2 A Yes.

3 Q "Called Mack in Chicago with Pres." That
4 also happened; right? "Gergen was with Mack as it
5 was heard." That's also correct?

6 A Correct.

7 Q Did you mention to the assembled staff here
8 that the First Lady had been brought in to look at
9 the note?

10 A Members of the assembled staff were sitting
11 there, sitting there. Mr. Neuwirth knew that the
12 First Lady had been brought in to look -- he was
13 there when the First Lady was brought in to look at
14 the note?

15 Why don't you ask Mr. Neuwirth whether I
16 told him not to tell anybody the First Lady looked at
17 the note because it's such nonsense because that
18 event had nothing to do with -- I brought the First
19 Lady to look at the note, she had an emotional
20 reaction, she left. I apparently didn't tell that to
21 the staff at that point. One of the members of the
22 staff sitting there knew about it but I apparently

1 didn't tell it to the staff.

2 Q Mr. Neuwirth didn't tell it to the staff
3 either?

4 A I don't know. Maybe he did.

5 Q Do you remember him telling it to the
6 staff?

7 A I don't know. I don't know. The staff may
8 have been told at some point because this was sort of
9 a review of events. It was designed again to report
10 the most salient events. It could well have been
11 that either Mr. Neuwirth or I at some point told it
12 to members of the staff. But at least it's not
13 reflected on these notes, and I don't have any memory
14 of telling it to the members of the staff during this
15 meeting.

16 Q And you don't have a memory of Mr. Neuwirth
17 mentioning it in this meeting; right?

18 A I do not have a memory of Mr. Neuwirth
19 mentioning it in this meeting.

20 Q Did you consider it a salient point that
21 Bill Burton was shown the note?

22 A Yes, because Burton was basically Mack's

1 representative. Mack wasn't there at that particular
2 point and also, Burton was important because Burton
3 was a participant in a number of substantive
4 discussions with respect to doing research on the
5 issue of privilege and all these other issues which
6 arose, even in connection with the turning over of
7 the note.

8 Burton was a major participant in those
9 events. Neuwirth was a participant in those events.
10 Mack was a participant in those events. I was a
11 participant in those events. Hillary Clinton
12 happened not to be a participant in those events.

13 Q So is that the reason you didn't mention it
14 to the Park Police, the FBI, or the counsel's staff
15 when you recounted the events of Monday night during
16 the balance of that week?

17 MR. PEDOWITZ: We also have testimony that
18 he doesn't know whether he did or he didn't.

19 THE WITNESS: I don't exclude the
20 possibility that I did mention it. If you asked
21 me -- my guess would be, or my instinct would be that
22 I probably mentioned it sometime around that period,

1 to members of my staff in an informal -- just in
2 conversation. It wasn't a salient thing. She wasn't
3 involved in any discussions. Indeed, her reaction
4 was I cannot deal with this thing, you handle it, and
5 she just bowed outright away. If she didn't bow out,
6 if she would have participated in discussions with
7 respect to it, presumably her name would have come up
8 more and more. But she made a determination to bow
9 out.

10 What gets me about these questions, there's
11 nothing to hide about this unless you want to explain
12 to me what's the significance of this thing, or do
13 you want to explain to me on television? When do you
14 want to do it, now or on television?

15 Q I know you know, Mr. Nussbaum, a deposition
16 is not a format in which to engage me in discussion
17 or --

18 A But this is such an unusual proceeding, I
19 was hoping you'd be flexible.

20 Q I think we'd probably save time if we just
21 have you answer questions.

22 A But it wouldn't be as much fun.

1 Q Let me direct your attention to Z530, where
2 it says "counsel meeting 12/21/93 Whitewater file
3 issue. Never asked for file" --

4 MR. PEDOWITZ: Mike, where are we?

5 MR. CHERTOFF: Z530 is the last page.

6 THE WITNESS: Yes, I see that.

7 BY MR. CHERTOFF:

8 Q "Whitewater file issue, never asked for a
9 file or files"?

10 A Yes.

11 Q "Personal files of Clintons turned over to
12 personal attorney"?

13 A Correct.

14 Q Now, what prompted this discussion with
15 members of the White House counsel's staff?

16 A Undoubtedly -- I don't have a memory of
17 that day exactly -- but undoubtedly I know what
18 happened during that period. Well, in all
19 probability -- I can't be 100 percent certain unless
20 I looked at other things -- newspaper stories started
21 emerging that day or shortly -- at about that time at
22 least, with respect to the transfer of the Clinton

1 personal files. And this now was blown up by the
2 press into some sort of egregious, secretive,
3 dastardly deed.

4 And I was just explaining to the staff what
5 the situation was, namely that this was a personal
6 file of the Clintons, it had been turned over to the
7 Clintons and nobody ever asked for this file and now
8 it's being asked for by the Justice Department. It's
9 going to be shipped to them.

10 Q What did you mean nobody had ever asked for
11 the files? Did you mean during the course of the
12 search on the 22nd?

13 A No one ever asked for files in connection
14 with real estate investments or Whitewater or
15 anything in connection with that.

16 Q Were you referring to the search on the
17 22nd of July?

18 A I was referring from that moment to the
19 time this thing blew up in the press.

20 Q When you were going through the documents
21 on the 22nd of July, and you were characterizing them
22 to the assembled law enforcement people, did you

460

1 mention the Whitewater documents? Did you say there
2 was a Whitewater file?

3 A I don't know if I used the term
4 "Whitewater" or not. I do remember saying these are
5 personal Clinton investment files, financial files
6 and real estate files. I might have said -- I might
7 have read the label that said Whitewater real estate
8 development. I might not have. I have no memory one
9 way or the other but I do remember pointing out
10 investment files and I also believe saying financial
11 as well as real estate investment files.

12 MR. PEDOWITZ: Off the record just for a
13 second.

14 (Discussion off the record.)

15 BY MR. CHERTOFF:

16 Q Now, let me direct your attention to what
17 we've marked as BN 1. I just want to ask you very
18 briefly --

19 A Could I have the others for a second? If
20 you're still questioning on that -- because I may
21 want to refer to --

22 Q BN 1 is something that occurred -- relates

1 to something that occurred on the 22nd of July. I
2 just want -- you've had an opportunity, a fairly
3 substantial opportunity to look at this. I'm not
4 going to take you through it line by line.

5 Is it still your testimony that you did not
6 have an agreement in the late afternoon on the 21st
7 with the Department of Justice that the Department of
8 Justice attorneys would look at the documents or at
9 least each file to determine if it contained
10 privileged material, examining them long enough to
11 determine if they were covered by the attorney-client
12 privilege or executive privilege?

13 A Do you believe, Mr. Chertoff, that I
14 allowed a secretary to enter the office to straighten
15 up the top of the desk and cleaning personnel to
16 empty a waste paper basket and then I notice that the
17 basket was being removed and retrieved its contents?
18 Do you think that's accurate? Do you believe that's
19 accurate?

20 MR. PEDOWITZ: Why don't we answer his
21 question.

22 BY MR. CHERTOFF:

1 Q I think you should answer the question.

2 A I know what I'm pointing out to you is
3 something in this document which is a blatant
4 misunderstanding on his part and a blatant
5 inaccuracy, that Mr. Nussbaum had allowed a secretary
6 to enter the office to straighten up the top of the
7 desk. You've now had my testimony with respect to
8 that and I'm sure you've had the Secretary's
9 testimony. What I'm pointing out to you is do I
10 think Mr. Adams believes that the secretary entered
11 the office to straighten up the -- that I permitted
12 the secretary to enter the office? Do I believe he's
13 lying when he drafted that? He was mistaken. He
14 made a mistake. There was a misunderstanding. There
15 was a miscommunication. That's what happened.
16 Mr. Adams is a good person. He's a smart person.
17 He's an honest person. He's a decent person, but he
18 made a mistake.

19 Q Mr. Nussbaum, you've now answered the
20 question about speculating about Mr. Adams and
21 talking about everything except the question I've
22 asked you. I'm going to ask you. Did you have an

1 agreement on the 21st that the Department of Justice
2 attorneys were going to do the review?

3 A It was my understanding that we did not
4 have an agreement.

5 Q And on the next day, did the Justice
6 Department attorneys point out that your review of
7 the documents and your being the decisionmaker on
8 privilege was inconsistent with the previous day's
9 agreements?

10 A It's my recollection that we had a
11 discussion of various options, both on the day before
12 and on the next day. And at no time -- at no time
13 was it my understanding we concluded an agreement. I
14 recognize that it's possible, more than possible --
15 it's likely that people on the other side of this
16 discussion, in their minds, concluded that they
17 thought we had an agreement. This is an honest
18 misunderstanding between honest people who have
19 different institutional interests.

20 That's what happened. And they had a
21 misunderstanding or maybe I had a misunderstanding
22 but there was a miscommunication obviously just like

1 there was a miscommunication with respect to the
2 conveying of information with regard to the secretary
3 entering the office. These things happen.

4 Q A secretary did enter the office in the
5 morning; right?

6 A But not as the way it states here. No -- I
7 did not allow a secretary to enter the office to
8 straighten up the desk.

9 Q You hadn't taken steps to secure
10 Mr. Foster's office the night before?

11 MR. BEN-VENISTE: I would suggest that it's
12 really now getting into argument.

13 THE WITNESS: I started it.

14 MR. CHERTOFF: I agree with you.

15 THE WITNESS: I started it.

16 MR. BEN-VENISTE: Bernie agrees he started
17 it. Let's all end it.

18 BY MR. CHERTOFF:

19 Q Let's proceed up to the 22nd. Is it your
20 testimony, on the 22nd during the morning when you
21 were having discussions with Mr. Margolis and
22 Mr. Adams, is it your testimony that they were not

1 repeatedly telling you that you were violating your
2 agreement of the evening before, and you were
3 nevertheless telling them that you would do it the
4 way you wanted to do it? That didn't happen?

5 A That didn't happen. That they were
6 repeatedly telling me I violated my agreement of the
7 evening before?

8 Q Right.

9 A That didn't happen, and I suggest you ask
10 other people about that, too, who were there. I'm
11 just trying to be helpful to you, Mr. Chertoff, once
12 again.

13 Q Now I'm going to read you from the portions
14 of notes of Mr. Heymann which relate to his direct
15 conversations with you, and I want to emphasize, so
16 there's no misunderstanding, I'm not reading parts
17 where he might have talked to someone else in the
18 Department of Justice or some other person, just
19 where he has notes indicating -- and we haven't had
20 the benefit of his testimony because I've acceded to
21 counsel's request that we read the notes before we
22 have the benefit of Mr. Heymann's testimony.

1 Having agreed to do that at counsel's
2 request, I want to make it clear that I'm reading
3 what appear from the notes to be conversations that
4 Mr. Heymann had directly with Mr. Nussbaum, which I
5 believe to have been on the telephone. And I take it
6 you would agree, Mr. Nussbaum, you didn't have
7 person-to-person conversations with Mr. Heymann in
8 person on the 22nd. You didn't see him in person on
9 the 22nd?

10 A That's correct.

11 Q And this comes from -- what I'm reading to
12 you is from the notes denominated Thursday 22, 10:30
13 PM, and there's a little arrow BN -- "terrible
14 mistake. You're making a mistake. I'll call RA,"
15 which I assume to be Roger Adams, "and DM," which I
16 assume to be David Margolis, "back here -- -- BN
17 arrow PH 'I have to talk to some people about this.'"

18 Did that happen?

19 A What time?

20 Q 10:30 a.m., Thursday July 22nd. I'll read
21 to you. "PH to BN terrible mistake, you're making a
22 mistake I'll call RA and DM back here. BN to PH. 'I

1 have to talk to some people about this."

2 Did that happen.

3 MR. BEN-VENISTE: I have a question about
4 how you characterize the notes.

5 MR. CHERTOFF: What's the question? I want
6 to say this. If you're going to start to tell me
7 that I'm interpreting the notes, then I'll stop
8 reading because we haven't had the benefit of
9 Mr. Heymann's testimony.

10 MR. BEN-VENISTE: No, no. My only point is
11 I did not hear -- perhaps I overlooked or was not
12 attentive enough -- as to whether you described when
13 these notes were made, whether they were
14 contemporaneous notes or made afterwards. I just
15 didn't hear that.

16 MR. CHERTOFF: I didn't.

17 BY MR. CHERTOFF:

18 Q I mean, these are notes by Mr. Heymann.
19 I'm not going to start to get into testimony and
20 testify on the record. I think I've already gone
21 frankly substantially further than I wanted to. I'll
22 read it again. "10:30 PH to BN terrible mistake

1 you're making a mistake. I'll call RA and DM back
2 here. BN to PH 'I have to talk to some people about
3 this.'"

4 Did that happen?

5 A My answer is I don't remember it happening,
6 but I have no doubt that if Phil Heymann says that
7 happened, that that refreshes his recollection, then
8 this is a recollection that it happened. I'm not
9 saying that this is -- unlike what I just talked
10 about the Roger Adams thing, which was clearly wrong,
11 what he was saying about the secretary went into the
12 office and how she went into the office. I'm not
13 saying that with respect to this. I just want to
14 distinguish how I'm treating this.

15 I have no memory of that happening on the
16 22nd. I remember the discussions with Adams and with
17 Margolis and I remember, as I said yesterday, they
18 discussed some disquiet about the way I wanted to do
19 it. And as we were discussing these various options,
20 they wanted more. It was clear to me they wanted
21 more than I was providing at that point. I didn't
22 break any agreements, didn't make any agreements in

1 my mind but they wanted more. It may well be that
2 the kind of discussion that's reflected in those
3 notes, if Heymann remembers it did take place. I
4 just have no independent memory of that discussion.

5 Q And you don't remember Mr. Heymann telling
6 you that morning you were making a terrible mistake
7 in substance?

8 A No, I really don't remember him telling me
9 that. He may have said that to me but I don't
10 remember him telling me.

11 Q 9:00 that night --

12 MR. PEDOWITZ: Excuse me one second.

13 (Discussion off the record.)

14 BY MR. CHERTOFF:

15 Q 9:00 that night, PH arrow to BN -- 'you
16 misused us.' -- BN arrow PH we're not hiding
17 anything.'" .

18 I'll read it again. "9:00 July 22 PH to BN
19 'you misused us.' BN to PH we're not hiding
20 anything" --

21 MR. PEDOWITZ: One thing that should be
22 clear and I know that part of this is -- there's a

470

1 little drama in your voice, too, which I
2 understand -- that's fine because we've had a little
3 volubility on this side as well but it's also
4 perfectly clear, I assume, that what we are dealing
5 with is in notes. That is, in no sense, can that be
6 a full explication of the conversation.

7 MR. CHERTOFF: Absolutely not. I am not --

8 MR. PEDOWITZ: We do not understand it, as
9 yet -- I'd love to understand and someday maybe I
10 will -- the context in which the use of this term
11 "misused us" is occurring.

12 MR. CHERTOFF: That's why I cautioned you
13 at the beginning. We hadn't had the testimony. You
14 asked me to give you the notes. To hear you now
15 complain there's an unfairness in my reading of the
16 notes is really outrageous.

17 MR. PEDOWITZ: Let's sort of step back
18 because I don't mean to offend you, nor do I mean to,
19 in any respect, ask you not to read those to us
20 because I am very grateful that you are doing so.
21 I'm merely pointing out we do not as yet have the
22 context here and I have a client who is answering

1 questions based on obviously excerpts of notes that
2 we do not have the full explication of the witness
3 about. An obvious point. You have made this point.
4 I am merely making it also. I'm trying to take the
5 tone down, yours as well as his, for a moment.

6 MR. CHERTOFF: Mr. Nussbaum isn't answering
7 questions about notes that he didn't write. He's
8 answering questions about his memory of an event that
9 he personally participated in.

10 MR. PEDOWITZ: Correct.

11 MR. CHERTOFF: There's no question the
12 notes are summaries. I agreed to read it to him so
13 that he understands the notes that someone else wrote
14 about a conversation the other person claimed to be
15 having with Mr. Nussbaum. But I'm not suggesting it
16 was taped, no wire taps or electronic surveillance.

17 BY MR. CHERTOFF:

18 Q I'm asking you did this conversation or a
19 conversation in which these things were said occur on
20 or about 9:00 Thursday night, July 22nd, 1993?

21 A Thursday night, 9:00 July 22nd, the problem
22 is I don't know the context in which this is arising,

1 I don't believe, and I don't believe. That
2 Mr. Heymann ever said to me that we misused -- is
3 that the word?

4 Q "You misused us."

5 A That we misused the Department of Justice
6 in conducting -- in the manner we conducted the
7 search. I don't ever remember him saying that to me
8 at all.

9 Q Do you remember him saying in substance
10 that night that he was angry about the fact, about
11 the way you handled that search?

12 A I don't remember now whether there was a
13 press release or something issued by the White House
14 in connection with this matter, which he was angry
15 about.

16 Q There was no press release on the 22nd,
17 Mr. Nussbaum.

18 MR. BEN-VENISTE: How do you know that?

19 MR. CHERTOFF: You're right. I'll withdraw
20 the statement. I shouldn't be testifying.

21 BY MR. CHERTOFF:

22 Q Are you testifying that you believe it's a

1 press release that caused this?

2 A I'm testifying -- I'm testifying I don't
3 believe that Mr. Heymann used that phrase to me "you
4 misused us," referring to the manner in which the
5 search was conducted that day, which I was trying to
6 balance out various -- I don't believe it. If he
7 used that terminology, it would have been in
8 connection with something else.

9 Q Like what?

10 A Like, for example, a press release being
11 issued, which perhaps stated that the Justice
12 Department was involved to a somewhat greater extent
13 than it believed it was involved.

14 Q What about the phrase BN to PH "we're not
15 hiding anything." Did you have a discussion with
16 Mr. Heymann on that evening in which he asked you or
17 suggested to you whether you were hiding something?

18 A I have no memory of that conversation.
19 It's possible -- if his notes reflect it and if he
20 says it, he's an honest person, and it happened.
21 Phil Heymann is an honest guy. He's going to tell it
22 as he remembered it. If he says it happened, I have

1 no reason to dispute that it happened. I have no
2 dispute that it happened. I have no memory of it at
3 this time. In any case I agree with the sentiment
4 expressed. We were not hiding anything.

5 Q I want to direct your attention to your
6 testimony yesterday in which I asked you about
7 whether a conversation like this occurred and you
8 indicated to me -- and I'm summarizing -- you don't
9 have to answer it -- I'm calling your attention to
10 the fact that you testified yesterday you did not
11 remember such a conversation and it was the sort of
12 thing you would remember?

13 A Let me finish --

14 Q Please, Mr. Nussbaum --

15 A I want to say something. It's the sort
16 of -- if I thought if Phil Heymann said to me you
17 misused the Justice Department by having the search
18 conducted in the way you had it conducted, I would
19 remember that. It's the kind of thing I would
20 remember. That's why even today I'm saying I don't
21 believe he said that in connection with that matter.

22 On the other hand, you can ask him, and

1 we'll see what his memory is with respect to this.

2 Q Just for completeness, I'm going to read
3 you his notes of the 27th on Tuesday and I'm not
4 going to ask any questions terribly controversial
5 about it. "AGAC -- 5:15 go to WH" --

6 MR. PEDOWITZ: I'm sorry, AGAC is what?

7 MR. CHERTOFF: Capital letters, A-G-A-C --
8 I don't want to testify. "AGAC -- 5:15 go to WH,"
9 which I infer to be White House. "BN: Wanted me
10 there. Rode over with AG. Bernie reveals note. AG
11 said turn it over, called Park Police (and then there
12 is a DM and a scribble I can't make out) BN to PH
13 stay. "BN assembled note and read it aloud. Rode
14 back with P Police." That's on the next line. "I'm
15 not going to ask any questions about that.

16 MR. PEDOWITZ: Could you read it one more
17 time because I couldn't get it all as I was
18 listening.

19 MR. CHERTOFF: 5:10 BN wanted me there.
20 Rode over with AG, Bernie reveals note, AG said turn
21 it over. Called Park Police (illegible.) BN to PH
22 stay. BN assembled note and read it aloud. Rode

1 back with P police."

2 MR. PEDOWITZ: Appreciate your courtesy on
3 that.

4 MR. CHERTOFF: I have nothing further.

5 EXAMINATION

6 BY MR. BEN-VENISTE:

7 Q Mr. Nussbaum, as you know, my name is
8 Richard Ben-Veniste and I am counsel to the
9 minority.

10 We have mentioned in our off-the-record
11 conversations today our time constraints and because
12 of a scheduled members' meeting that both
13 Mr. Chertoff and I must attend shortly, I'm going to
14 try to be especially brief.

15 Let me direct your attention to matters
16 that were covered in great detail this morning by
17 Mr. Chertoff, and one of them is the issue of whether
18 you specifically made a point of telling or not
19 telling about the fact that Mrs. Clinton had seen the
20 assembled pieces of Mr. Foster's writing shortly
21 after it was discovered.

22 Did you have a sense after that experience

1 that there were certain privacy concerns attached to
2 Mrs. Clinton's reaction to learning of this writing?

3 A Yes.

4 Q And can you say now, in all honesty,
5 whether those concerns on a human level may have, in
6 addition to whether or not her viewing of the note
7 was a material part of the chronology of events of
8 the discovery of the note, whether that may have
9 affected you in terms of whether or not you wanted to
10 call attention to that?

11 A Yes, that's a good point. Mrs. Clinton,
12 the sense I got from her was she was terribly
13 concerned about this generalized invasion of
14 privacy. Just focused now on Vince and his family,
15 his life. And she was -- she had her own close
16 relationship with him and so she was distraught about
17 what happened to him and to his family, and what was
18 happening to her.

19 Q Let me focus now on the --

20 A And indeed I just didn't go around -- she
21 clearly had a strong emotional reaction of a personal
22 nature or private nature as suggested to you by

1 Mr. Ben-Veniste. And when I think back, since
2 Mr. Chertoff suggested it, first of all, I didn't go
3 around talking about Hillary Clinton generally when I
4 was White House counsel and I certainly don't go
5 around talking about her having seen something, in a
6 very human personal private way, sort of having huge
7 emotional reaction. I don't go around telling people
8 that when it's not particularly relevant to anything.

9 Q Let me turn now to the question of your
10 conversation --

11 A Other than people's Puritan interest.

12 Q -- with Mr. Heymann on the 22nd of July
13 1993 at approximately 9:00 p.m., as Mr. Chertoff read
14 to you from Mr. Heymann's notes. Do you recall that
15 on July 23, 1993 The Washington Post reported that
16 the search of the office of Mr. Foster had been
17 undertaken under the supervision of Justice
18 Department lawyers?

19 A I recall there were stories around that
20 period, and that sounds like something that was
21 reported at that time.

22 Q To the best of your recollection, if that

1 Washington Post story was, in fact, the product of
 2 information which came over the wires or which was
 3 available as of 9:00 p.m. the previous evening, would
 4 that in any way refresh your recollection about the
 5 substance or context of Mr. Heymann's remark to you?
 6 That is, whether Mr. Heymann made a complaint that
 7 the White House characterization of this search as
 8 being under the supervision of the Department of
 9 Justice was something of an exaggeration?

10 A That could be. I just have no memory of
 11 that at this time. I remember discussions from time
 12 to time about how the Justice Department, or other
 13 departments, were sometimes angry about how certain
 14 things were characterized by the White House press
 15 office which then got into the press. And it may
 16 well be -- although I have no independent
 17 recollection -- that that was bothering Mr. Heymann.

18 And if it did bother Mr. Heymann, he would
 19 have some justification focusing on the word
 20 "supervision" because they didn't supervise it. I
 21 supervised it. They were present when I was looking,
 22 but they didn't supervise it. And it may well be

1 that he could have been upset about that.

2 But again, Mr. Ben-Veniste, I have no
 3 independent recollection. People have to go to
 4 Mr. Heymann and ask him.

5 Q Let me focus --

6 A What I don't remember is a heated
 7 discussion with Mr. Heymann that night. Maybe it's
 8 Mr. Chertoff's questions which were heated, but I do
 9 not remember a heated discussion with Phil Heymann
 10 that night.

11 Q Let me ask you to focus your attention to
 12 the point at which Mr. Megby from the Park Police
 13 came to the White House and you showed him and turned
 14 over to him custody of the torn-up writing of
 15 Mr. Foster. On that occasion, did you handle the
 16 note?

17 A On the occasion -- this is July 27th?

18 Q July 27th in the presence of Mr. Heymann
 19 and Officer Megby. I'm sorry, but I don't know his
 20 precise title, but I understand he is an officer of
 21 the Park Police.

22 A I did handle the note.

1 Q And did you assemble the note, the pieces
2 of paper that comprised the note, in his presence?

3 A Yes.

4 Q Did Officer Megby or Mr. Heymann instruct
5 you not to touch the note?

6 A No.

7 Q Did there come a time when you learned that
8 a palm print and what experts call a latent palm
9 print was discovered on one or more pieces of that
10 note?

11 A Yes.

12 Q And do you understand that -- strike that.

13 Did you at some point provide full case
14 hand prints to the FBI or someone working under the
15 supervision of the Independent Counsel's office?

16 A Yes.

17 Q And in that connection, is it your
18 understanding that your palm print was discovered to
19 be on one or more of pieces of Mr. Foster's writing?

20 A Yes, that is my understanding.

21 Q Let me go back to the events of July 20th,
22 1993. Do you have a recollection whether, from any

1 source, you were requested or instructed to apply to
2 Mr. Foster's office any special security measures,
3 either by way of sealing, posting, securing or
4 otherwise?

5 A I received no such instructions from anyone
6 on July 20th.

7 Q In connection with the scope of the search
8 requested by the Park Police, was there ever a
9 request that you allow them to search for anything
10 other than a suicide note, an indication of mental
11 state or anguish, or any material constituting an
12 extortion threat?

13 A You phrased it better than I phrased it in
14 the testimony. There was never any request for
15 anything other than what you just described.

16 Q Either in connection with a request made
17 for them to look for such material themselves or when
18 you explained the procedure that you had arrived at,
19 whether they made any request beyond the scope of
20 that which I've just described in connection with
21 your review of the materials?

22 A They made no such request beyond the scope

1 of that which you described; other than during the
2 search itself, they began asking for things which go
3 beyond that a little bit, such as logs of telephone
4 calls, saying they really wanted to talk to the
5 people -- recent telephone calls who Foster had
6 talked to shortly before his death, which I
7 understood as a legitimate law enforcement request.

8 Okay, you make those requests for
9 additional documents. I'll pile them up. I'll
10 consider them and I'll make a decision whether we
11 want to exercise any privilege or anything like
12 that. They made their request. We piled up the
13 documents. We gave them everything they asked for.

14 Q You anticipated my next question. Was
15 there any material that either the FBI, the Park
16 Police, the Department of Justice specifically
17 requested of you that was not provided to them, to
18 the best of your knowledge?

19 A Everything that any law enforcement agency
20 from the Park Police to the FBI to the Secret Service
21 to the Department of Justice, ever asked for, they
22 got.

1 Q Specifically, to the best of your
2 knowledge, did Maggie Williams or Patsy Thomasson
3 remove anything from Mr. Foster's office on the night
4 of July 20, 1993?

5 A They did not remove anything, and I would
6 also note -- I think Mr. Chertoff gave this to me --
7 that I believe in one of these reports of my
8 interviews that I informed the Park Police on July 21
9 on the late afternoon of July 21 that I was in the
10 office on the evening of July 20th along with Maggie
11 Williams and Patsy Thomasson.

12 Q You're referring to the report of Detective
13 Markland of the Park Police?

14 A I believe -- if you just -- if I could look
15 at the top of the document, I could tell you
16 immediately.

17 MR. MAZUR: I think it's undated.

18 THE WITNESS: Yes -- well, internally it
19 says after -- it discusses an interview with me on
20 July 21st, which is prior to the search in which I
21 tell him in that interview -- I tell him that "on
22 July 20th, after Foster's death became known to me,

1 Nussbaum responded back to the White House where he
2 went through Mr. Foster's office with Patsy Thomasson
3 and Maggie Williams. Mr. Foster stated "that's a
4 mistake" -- he means Mr. Nussbaum stated -- "that
5 they conducted a brief quick search to see if
6 Mr. Foster may have left a suicide note on his
7 desk."

8 These are people being -- then they say the
9 search lasted until 2200 or 2400 which couldn't be a
10 quick brief cursory search because they have an error
11 in there because I didn't understand it to be -- then
12 it states "Mr. Nussbaum stated there were no
13 documents removed from the office" and that answers
14 your question.

15 BY MR. BEN-VENISTE:

16 Q Not only does it answer that question, but
17 it answers several possible anticipated questions.

18 A I've been trying to get you to take me to
19 the members' briefing. That's why I wanted to
20 impress you like that.

21 Q We may run right into that if your answers
22 are as expansive as they have been so far.

1 (Laughter.)

2 So your answer is, adequately refreshed,
3 that you did indeed report to law enforcement
4 officials promptly, and without hesitation, the fact
5 that not only you went through the office to look for
6 a suicide note but present as well were Patsy
7 Thomasson and Maggie Williams; is that so?

8 A That's so, yes.

9 Q On July 21, 1993, you had occasion to see
10 and speak with the Park Police officers as you did on
11 July 22nd, 1993 as well; is that correct?

12 A Correct.

13 Q On any occasion, did any representative of
14 the Park Police ask you anything about whether Craig
15 Livingstone had either been in Mr. Foster's office in
16 the prior hours since his suicide or whether
17 Mr. Livingstone had been in possession of any
18 materials removed from Mr. Foster's office?

19 A No, I was never asked that by anybody in
20 the Park Police.

21 Q Were you asked that by anyone from any
22 other investigative agency, including the Department

1 of Justice attorneys that you met with?

2 A No one ever asked me that.

3 Q To the best of your knowledge, did
4 Mr. Livingstone either enter Mr. Foster's office
5 subsequent to his suicide or remove any documents
6 from Mr. Foster's office?

7 A I have no knowledge of Mr. Livingstone
8 removing -- entering Mr. Foster's office or removing
9 anything from Mr. Foster's office.

10 Q Now, in connection with the procedure that
11 you have described whereby you went through the
12 contents of Mr. Foster's office looking for a
13 suicide, extortion or similar kind of writing, you
14 have described that a number of individuals -- I
15 think all attorneys, maybe not some of them -- maybe
16 some of them not practicing attorneys at the time --
17 had opinions about the proper scope of protection of
18 various privileges to be accorded to the contents of
19 Mr. Foster's office; is that correct?

20 A Yes.

21 Q Without going into this in finer detail, is
22 it a correct summary, that there were individuals who

1 suggested to you that Mr. Foster's office should not
2 be entered by any law enforcement official outside of
3 the White House for any purpose associated with the
4 suicide investigation?

5 A That's correct.

6 Q And we have heard testimony from you that
7 there were individuals who, following the discovery
8 of the note, articulated certain criticisms of the
9 way counsel's office had dealt with the law
10 enforcement personnel who were investigating
11 Mr. Foster's death. Do you recall that?

12 A Yes.

13 Q Did anyone -- strike that.

14 As you sit here today, do you believe that
15 if the Park Police had in the first instance --
16 putting aside attorney-client privilege, executive
17 privilege, privacy interests and other concerns that
18 you mentioned -- if you had allowed the Park Police
19 in the first instance to go through Mr. Foster's
20 office, they would have had any interest in a
21 Whitewater file, in the travel office file, in any of
22 the specific documents that we have discussed over

1 these two days, other than the torn-up writing of
2 Mr. Foster's?

3 MR. CHERTOFF: I want to interject a
4 caution. I don't want to blindside the witness. I
5 believe the question was based on what the witness
6 now knows, the witness sitting here today, what the
7 witness's opinion is? Since to my mind that will
8 throw open all the witness knows about Whitewater,
9 what was in the file or anything of that sort in
10 terms of any privilege, so I mean, I don't have an
11 objection to him answering the question but I don't
12 want you to be blindsided having answered a question
13 concerning, as you sit here today, is there anything
14 in the file that they might have been interested in.

15 MR. BEN-VENISTE: I thought my question was
16 directed to Mr. Nussbaum's thought process at the
17 time he was considering these competing interests,
18 but if it wasn't, I'll amend it in that regard.

19 THE WITNESS: I'm sorry to do this, but
20 you'll have to repeat your question.

21 BY MR. BEN-VENISTE:

22 Q At the time you were getting these

1 conflicting views concerning the extent of protection
2 of executive privilege, attorney-client privilege,
3 privacy interests, did you have any concern that, had
4 the Park Police been permitted to go through
5 Mr. Foster's office on their own, that they would
6 have had any interest in reviewing the Whitewater
7 materials, the travel office materials or any other
8 such documents, other than the torn-up notes?

9 A I believe they had no interest in seeing
10 any such files. All they were interested in seeing
11 was a suicide note or an extortion note or something
12 reflecting, to use your terminology, mental anguish
13 which is reflected in the torn-up handwritten list
14 found on July 26th.

15 Q Mr. Nussbaum, do you have any reason to
16 believe that, based on your own knowledge or based on
17 anything that anyone who might have knowledge of
18 these events has told you, that Mr. Foster's writing
19 was not in the condition it was found in at any point
20 subsequent to his death?

21 A I have no reason to believe that.

22 MR. BEN-VENISTE: Let's take a five-minute

1 break, and I think we can wrap up quickly.

2 MR. CHERTOFF: I'll have a couple minutes
3 afterwards. Are you done?

4 MR. BEN-VENISTE: Well, I'm looking.

5 (Recess.)

6 BY MR. BEN-VENISTE:

7 Q Mr. Nussbaum, is it correct to say that,
8 after receiving all the various input that you've
9 testified you received concerning the decision about
10 how to balance the interests of the White House, the
11 Fosters and the Clintons with the legitimate
12 interests of law enforcement agencies, was it, in the
13 final analysis, your decision and your decision alone
14 to employ the procedures which you employed?

15 A It was my decision and my decision only.

16 Q Now, in connection with your conversation
17 with Susan Thomases, can you say whether, as of the
18 evening of July 21st or the morning of July 22nd,
19 that it was a secret that the Park Police had made a
20 request to search for a suicide note?

21 A No, it was not a secret.

22 Q Was this something which was very closely

1 held among you and other individuals in the White
2 House, or was it the subject of some more open
3 discussion?

4 A It was not closely held. It was the
5 subject of open discussion.

6 Q And did it surprise you that Susan Thomases
7 would give you the benefit of her views on this
8 issue?

9 A It would not surprise me, but she didn't
10 really give me the benefit of her views. All she
11 asked me was what's going on? What was I planning to
12 do? What were my reasons? And she didn't suggest I
13 should do anything else, but if she did -- it
14 wouldn't surprise me, to answer your specific
15 question, that she would give me the benefit of her
16 views. It happens she didn't give me the benefit of
17 any views she had.

18 Q It did not surprise you that she knew about
19 the fact that these issues were being considered?

20 A No, it would not surprise me. She was in
21 close touch with the White House on a frequent basis
22 and indeed was in the west wing a fair amount of the

1 time. If you were in the west wing, you would know
2 what's going on.

3 Q Is it your testimony that Ms. Thomases
4 talked to a number of people in the west wing on
5 something of a regular basis?

6 A That is my testimony.

7 Q Let me conclude with a question that goes
8 to sort of the heart of a lot of what we've been
9 talking about and perhaps demystifies some of the
10 very careful details that we've been looking at. And
11 that is whether you had, in July of 1993, some view
12 of whether it was appropriate for Mrs. Clinton or the
13 President, had they wanted to, to review the files
14 that Mr. Foster was maintaining in his office dealing
15 with their personal finances or real estate
16 investments or other such matters?

17 A I believe it was entirely appropriate. I
18 believe after a client's death, a client's personal
19 files belong to the client.

20 MR. PEDOWITZ: A lawyer's death --

21 THE WITNESS: -- after a lawyer's death a
22 client's personal files belong to the client.

1 BY MR. BEN-VENISTE:

2 Q That would be true even before a lawyer
3 died, wouldn't it?

4 A It certainly would be true before a lawyer
5 died, as well as after a lawyer dies.

6 MR. BEN-VENISTE: I have nothing further.

7 MR. CHERTOFF: I just have a couple minutes
8 of questions.

9 EXAMINATION

10 BY MR. CHERTOFF:

11 Q You were asked about whether, when you were
12 with the Park Police officer on the 27th late in the
13 day after you had told the Attorney General and
14 Mr. Heymann about the note, whether you handled the
15 note and whether you were asked in a way not to touch
16 it. I believe your testimony was that no one asked
17 you not to touch it.

18 At the time that you saw the note on the
19 26th, did you give any instructions to have the note
20 kept in such a manner so that it wouldn't be touched?

21 A I didn't give any instructions, but I, in
22 effect, acted in that fashion because I was the one

1 who took possession of the note. I was touching it,
2 to be sure. I didn't prevent myself from touching
3 it. I could have put on gloves or something. I
4 could have prevented myself, but I didn't think of
5 that. What I did, after the note was discovered,
6 after Neuwirth and I had put it together -- he mostly
7 put it together -- I then took possession of it, and
8 I don't believe I ever gave possession of the
9 original note to anyone thereafter until I handed it
10 to the Park Police on the night of the 27th.

11 Q Did you let Mr. Burton touch it?

12 A I don't think so. I don't think he ever
13 had occasion to touch it. I don't recall an instance
14 where I prevented him from touching it, but I don't
15 recall any occasion for him to touch it.

16 Q Did Mrs. Clinton touch it?

17 A I'm virtually -- no, because my memory is
18 she sat down at the table, she didn't touch it. She
19 looked at it and walked out.

20 Q You don't remember her touching it?

21 A I don't remember her touching it.

22 Q When you talked to the Park Police about

1 the events of July 20th when you disclosed to them --
2 let me withdraw the question.

3 You testified on the 22nd -- I'm sorry, on
4 the 21st --

5 A On the 21st.

6 Q -- you had an interview or discussion with
7 the Park Police where you described the events of the
8 20th and indicated that you and Ms. Thomasson and
9 Ms. Williams had spent a brief period of time in the
10 office looking for the note; right?

11 A That's correct.

12 Q And in fact, on later occasions you've made
13 public statements to the press indicating that you
14 and Ms. Thomasson and Ms. Williams spent about 10
15 minutes looking for a suicide note in Mr. Foster's
16 office on the night of the 20th; correct?

17 A I don't recall making substatements to the
18 press. That's one of the things -- one of the things
19 I did when I was in Washington was make very few
20 public statements to the press. That's one of the
21 things I'm sorry about now.

22 Q Directing your attention to your discussion

1 with the Park Police on the 21st, did you make it
2 clear to them that, when you entered the office,
3 Ms. Thomasson and Ms. Williams were already there?

4 A I may have. I may have described it just
5 like that. I may have said, I walked in and they
6 said they got there -- the way I described it to you
7 in this testimony. In my mind, it's likely that I
8 did so.

9 Q You have a recollection of doing that?

10 A I don't have a recollection one way or
11 another of how I described it, but it's more likely I
12 would have done it than not done it. It depends on
13 how the questions were asked, but it was clear -- I
14 made it clear to them that all three of us were in
15 the office.

16 Q At the time that you were considering the
17 procedure to follow in searching inside Mr. Foster's
18 office on the 22nd, I believe you were asked by
19 Mr. Ben-Veniste whether at that time it occurred to
20 you that the Park Police would have any interest in
21 Whitewater materials.

22 Were you aware at that time there were

1 Whitewater materials in Mr. Foster's office?

2 A No.

3 Q So then you didn't -- you couldn't have had
4 an opinion about whether the police would want to see
5 them since you didn't know they were there?

6 A I did have an opinion. Mr. Ben-Veniste --
7 my answer to the question of Mr. Ben-Veniste was
8 correct. They didn't -- they weren't interested in
9 personal files or official files. They were
10 interested in is there a suicide note or an extortion
11 note or some document on its face reflecting mental
12 anguish. That's what they were interested in, and
13 that's what we were looking for.

14 Q Did they say to you they wanted to do an
15 inventory or search of the office?

16 A What I remember is they said they wanted to
17 do a search of the office for that -- for the type of
18 material I just described.

19 Q Did they say they wanted to review
20 documents to gather evidence?

21 MR. PEDOWITZ: Use those words?

22 MR. CHERTOFF: In substance.

1 THE WITNESS: No, no, no. In substance,
2 they said what I just said. They wanted to search
3 the office for the type of document I just
4 described. Look, if people want documents for
5 another purpose -- forget it. I don't want to fight
6 with you. Go ahead.

7 BY MR. CHERTOFF:

8 Q Did any of the law enforcement people
9 indicate that one of the things they were concerned
10 about was whether there was some kind of a scandal or
11 something in the documents that might have caused
12 Mr. Foster to commit suicide?

13 A The answer to that is no.

14 Q They didn't say that to you?

15 A They didn't say that to me. If somebody
16 wants to conduct a review of all the files in the
17 office, people like Margolis or Adams or anybody
18 else, including the Park Police perhaps, are able and
19 competent to say we want to examine each file in the
20 office to see if there's anything in the files, you
21 know, which can cast any light on Foster's suicide.
22 Nobody -- that was not -- that's a request to review

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1 every file in the office. That request wasn't made.

2 Later on -- later on as requests were made
3 for documents -- because requests were made for
4 documents later on, which were beyond a suicide note
5 or extortion note, when those requests were made --
6 and they started to be made actually right during the
7 search itself -- those requests were taken under
8 advisement and then as each request was made, each
9 request was complied with.

10 Q So no request was made at the outset to
11 review all the files and documents in the office?

12 A That's correct. No request was made at the
13 outset to review all the files and documents in the
14 office.

15 Q At the outset of your conversation with
16 Mr. Ben-Veniste, you offered the opinion that the
17 President and Mrs. Clinton had the right at any time
18 to request their personal documents in Mr. Foster's
19 office to review at their pleasure?

20 A Yes.

21 Q And so then let me ask you this: Did the
22 President or Mrs. Clinton ever ask you, or anyone

1 else to your knowledge, to review the personal
2 files -- their personal files in Mr. Foster's office?

3 A No, they never asked. They never did ask.

4 MR. CHERTOFF: I have nothing more.

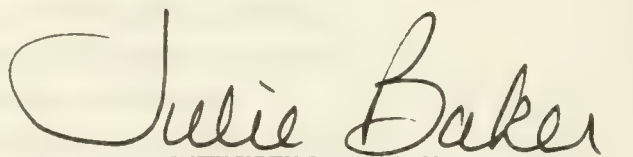
5 (Whereupon, at 2:55 p.m., the deposition
6 was concluded.)
7
8

9 BERNARD W. NUSSBAUM
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

502

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

In the late afternoon of Wednesday, July 21, we met in the office of White House Counsel Bernard Nussbaum with Mr. Nussbaum, Steve Neuwirth and Cliff Sloan of his staff, and representatives of the FBI and Park Police to go over the ground rules for a search of Mr. Foster's office. All agreed that because of the hour the search would not begin until the next day. At that point the Secret Service had stationed an agent by the door to Mr. Foster's office and a Secret Service agent who was at the meeting announced that a special lock would be placed on the door and that he personally would hold the key to secure it overnight. However, Mr. Nussbaum stated that he had already conducted a quick search of the "top of the desk" the previous evening to see if he could find a note. Moreover, other persons in the Counsel's office had entered the office during early morning business hours. Specifically, Mr. Nussbaum had allowed a secretary to enter the office to "straighten up" the top of the desk, and cleaning personnel had entered to empty a waste basket. Mr. Nussbaum or someone else in the Counsel's Office noticed the basket being removed and had retrieved the contents. They were in a plastic bag in the office.

At the Wednesday meeting there was agreement that the Justice Department attorneys would look at each document or at least each file to determine if it contained privileged material, in which case it would not be examined by the Park Police or FBI. We would not read the documents or make notes, but merely examine them long enough to determine if they were covered by the attorney-client privilege or possibly executive privilege. As an example of the clarity of this agreement, Mr. Neuwirth at one point, apparently trying to summarize it, said that "Bernie would look at each document and determine privilege. If he determined no privilege, it could be shown to the law enforcement officers." He was immediately corrected and Mr. Nussbaum agreed that the Justice Department representatives would see the documents to determine privilege. The next morning, however, Mr. Nussbaum had changed his mind and said he would look at the documents and decide privilege issues himself. The Justice Department attorneys pointed out that that was inconsistent with the previous day's agreement and would cause problems. We stated that the Counsel's Office would be better off to allow the Department attorneys to decide or at least help decide, privilege issues, because that would allow the White House to say that the issue was considered independently. Moreover, we stated that we had been asked to undertake this particular assignment at the White House in part because we had reputations of not talking to the press or "leaking." Mr. Nussbaum did not immediately begin the search but waited for about two and one half hours -- during which time he said he was considering whether to allow us to see the documents -- before deciding that only he and Associate Counsels Neuwirth and Sloan would see the documents.

During the search, Messrs. Nussbaum, Neuwirth, and Sloan stayed behind Mr. Foster's desk and examined documents pulled from the desk, nearby credenzas, and a briefcase. No other persons actually saw the documents. At one point during the search, Mr.

Sloan stated to an FBI agent who was standing: "You're not standing to get a look at the documents are you?" The agent indicated he was not, but sat down. In the particular setting, the remark was (to put it charitably) extremely offensive.

During the search, documents were removed from a briefcase. As with documents taken from the desk and credenzas, Mr. Nussbaum glanced at them quickly and made comments such as "these are privileged, they're things we're working on in the office," or "this has to do with something he was working on for the President," or "this is personal." We were not able to see the briefcase to see exactly what was in it. By the same token, we could not see the drawers to see if all material had been accounted for in them.

We asked to have the computer in Mr. Foster's office turned on. Mr. Nussbaum said he did not know how to do so and, in any event, he would not do so in our presence in case there were privileged documents on the computer. He said he would have a staff member examine the contents of the computer after we left. (Press reports in morning newspapers of that day had stated, without attribution, that no suicide note had been found on his computer.)

The Washington Post subsequently reported on Friday, July 23, that the search by Mr. Nussbaum had been "under the supervision" of Justice Department lawyers. It is extremely likely that the White House provided this characterization of the search.

I am not sure of the exact days involved, but there was a delay of almost 24 hours between the time a note was found torn up in the bottom of the brief case and notification of the Department.

On approximately July 28, 1993, we were informed by Thomas Collier, Chief of Staff to Secretary of the Interior Bruce Babbitt, that he had called the office of David Gergen at the White House to express concern over White House lack of cooperation with the Park Police investigation. He ultimately spoke to two persons, a Mr. Burton, and Roy [Neal] or [Neill], both of whom took a very aggressive tone and stated that any foul-up in the investigation was the fault of the Park Police, not the White House.

**DEPOSITION OF TERRY LYNNETTE COBEY
IN RE: S. RES. 120**

FRIDAY, JULY 14, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of TERRY LYNNETTE COBEY, called for examination pursuant to notice of deposition, at 4:40 p.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

ALICE S. FISHER, Esq.
Majority Deputy Special Counsel
LANCE COLE, Esq.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

ALSO PRESENT: VINCENZO A. DELEO

CONTENTS

| WITNESS | EXAMINATION |
|----------------------|-------------|
| Terry Lynnette Cobey | |
| by Ms. Fisher | 3 |
| by Mr. Cole | 50 |

EXHIBITS

| Terry Lynnette Cobey | IDENTIFIED |
|-----------------------|------------|
| DEPOSITION NUMBER | |
| Cobey Exhibit 1 | 26, 4294 |

1 PROCEEDINGS

2 Whereupon,

3 TERRY LYNNETTE COBEY

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MS. FISHER:

8 Q Hi, Ms. Cobey. As I told you before, my
9 name is Alice Fisher. I work for the Special
10 Committee to investigate Whitewater Development
11 Corporation, Madison Guaranty Savings & Loan
12 Association, Capital Management Services, Inc., the
13 Arkansas Development Finance Authority and other
14 related matters, which is administered by the Banking
15 Committee, and this deposition is being conducted
16 pursuant to Senate Resolution 120 which set up this
17 committee.

18 Section 1.B.1 of Senate Resolution 120
19 authorizes an investigation and public hearings into
20 "whether improper conduct occurred regarding the way
21 in which White House officials handled the documents
22 in the office of White House deputy counsel Vincent

4

1 Foster following his death." And that's the focus of
2 today's deposition.

3 To my left is Lance Cole and he is --
4 what's your title?

5 MR. COLE: Democratic counsel.

6 MS. FISHER: Democratic counsel for the
7 Special Committee to investigate Whitewater as well.

8 BY MS. FISHER:

9 Q I'm going to ask you a series of
10 questions. The court reporter is going to take down
11 my questions and your answers. If you don't
12 understand a question, let me know and I'll try to
13 rephrase it. If you need a break at any time, let me
14 know and we'll take a break. I don't want to mislead
15 you or be tricky in any of my questioning. I want to
16 make sure everything is clear for you, so please let
17 me know if you don't understand.

18 A Okay.

19 Q The stenographer is going to prepare a
20 record of the questions and answers and the
21 deposition will be treated as committee confidential
22 until the public hearings begin, and they are

1 scheduled to begin on July 18th of this year, next
2 Tuesday. Although according to the resolution you
3 may be represented by counsel, I see that you don't
4 have counsel here with you today; is that correct?

5 A Uh-huh.

6 Q And that is by your choice; correct?

7 A I don't know -- they just -- well, I just
8 got the information from the supervisor Thursday and
9 they said come down here today.

10 Q But you're giving this testimony without
11 counsel present willingly?

12 A Oh, yeah.

13 Q At the end when the deposition is completed
14 and a transcript is prepared, you will have an
15 opportunity to come down and review the transcript of
16 your deposition and make any corrections.

17 Could you state your name for the record,
18 please.

19 A Terry Lynnette Cobey.
20
21

22 Q Could you give me your present business

1 address?

2 A Washington, D.C.

3 Q The White House?

4 A Uh-huh.

5 Q And how long have you been employed at the
6 White House?

7 A Five years, going on six.

8 Q What are your duties there?

9 A I do bathrooms.

10 Q What duties do you have with regard to
11 bathrooms, cleaning responsibilities?

12 A Uh-huh, like the commodes, floors, mirrors.

13 Q Any other responsibilities in your
14 employment at the White House?

15 A It all depends on the crew. If it's short,
16 I do some of the rooms.

17 Q You help out when they're short-staffed?

18 A Right.

19 Q Kind of as a substitute?

20 A Uh-huh.

21 Q Is there any particular area in the White
22 House which you're responsible for?

- 1 A All the bathrooms.
2 Q And is that in the west wing and the east
3 wing?
4 A West wing.
5 Q Is that in how many floors?
6 A Three.
7 Q So all of the west wing, bathrooms on all
8 three floors?
9 A Right.
10 Q Is there a particular person that you
11 generally clean with, or is it whoever is cleaning on
12 the particular floor?
13 A It's whoever, and if they need some help, I
14 pitch in and help them.
15 Q Do you have a regular schedule at the White
16 House, hourswise?
17 A Uh-huh.
18 Q What hours do you work?
19 A 9:30 to quarter to 6:00.
20 Q In the morning?
21 A Right.
22 Q Were you working those hours in July of
-

- 1 1993?
2 A Yeah.
3 Q That was the same shift that you had?
4 A Right.
5 Q Did you have the same responsibilities --
6 A Yeah.
7 Q -- with the bathrooms in July of 1993?
8 A And it goes -- when I'm on the second
9 floor, it goes in the lockups, when Diann was on that
10 side, I help her do her two lockups.
11 Q What days -- do you recall back in July of
12 1993 what days of the week that you worked?
13 A No, because we had two different shifts
14 then. We had like a Sunday to Thursday and Tuesday
15 to Saturday. I can't remember what shift I was on,
16 what days I was on.
17 Q Do you recall that you generally worked --
18 in July of 1993, that you generally worked Tuesday,
19 Wednesday and Thursday?
20 A I don't know.
21 Q Did you ever have a Tuesday off in July?
22 Would that be a general day of the week which you may

1 have off?

2 A It's not a regular day off, but I don't
3 know -- I mean, I could have took off. I don't know
4 if I did or didn't.

5 Q Do you recall whether you worked on July
6 20, 1993?

7 A Yeah.

8 Q You believe that you did?

9 A I think.

10 Q Generally, when you get to work -- I
11 believe you said that was about 9:30?

12 A Uh-huh.

13 Q And you were working that shift in July of
14 1993. What would be the first thing that you did
15 when you came to work?

16 A Well, we don't leave the Old Exec until
17 about 20 minutes to 10:00. We get to the west wing I
18 guess about quarter to 10:00 and I get up on the
19 second floor by 10:00.

20 MR. COLE: Do you mean 11:00?

21 THE WITNESS: 10:00 because we start at
22 9:30.

10

1 BY MS. FISHER:

2 Q So you arrive at the west wing about 9:45
3 and then what do you do?

4 A We get our equipment out of the gear room.

5 Q And that is where?

6 A On the ground floor.

7 Q What is your equipment that you get?

8 A My bathroom cart.

9 Q Then what do you do?

10 A Go on the second floor to the two
11 bathrooms. Then I wait until the escort comes in and
12 help Diann, help her do her two lockups. Then I
13 leave that floor and go to the first floor.

14 Q And then you clean the bathrooms on the
15 first floor?

16 A Uh-huh, start from two on down.

17 Q So you arrive at the west wing around 9:45,
18 you go up to the second floor about 10:00 after you
19 get your equipment, and then you go and do your
20 bathrooms. How long generally does that take you?

21 A It really all depends. If the escorts get
22 up there early, I leave my bathrooms and go give her

1 a hand, then I go back to my bathrooms.

2 Q What time does the escort generally get to
3 the second floor of the west wing during your shift?

4 A About 10 to 11:00, something like that.

5 Q Between 10:00 and 11:00?

6 A About 10 minutes to 11:00.

7 Q So about 10:50. Does he get there later
8 than 10:50?

9 A Sometimes. I would be in the bathroom.

10 Q Do he and Ms. Walters come and get you?

11 A No.

12 Q You just see that he's there?

13 A Yeah, right because the bathroom is like
14 there and the two lockups are right there.

15 Q It might facilitate things a little better
16 if you could draw me a diagram of the second floor,
17 where the bathrooms are, where the elevators are and
18 where the lockups are, recognizing that this isn't
19 art class.

20 A The elevator -- you get off the elevator on
21 that side -- I don't know the name of them. I just
22 call them the big lockup and little lockup. That was

1 the big lockup and the little lockup right there.

2 When you get off the elevator, the bathroom is right
3 there.

4 Q Are there other rooms on the second floor
5 of the west wing?

6 A Uh-huh.

7 Q Where would they be?

8 A Get off the elevator, big lockup, little
9 lockup, they go back that way.

10 Q Any place else on the second floor where
11 there are rooms?

12 A The second floor has two sides, a lot of
13 rooms on this side but I only go in those two, just
14 to help her with those two.

15 Q Are there any other bathrooms on the second
16 floor, other than what you've indicated?

17 A A men's bathroom right there; then past the
18 big lockup is the ladies' bathroom.

19 Q The ladies' bathroom is right across the
20 hall from the little lockup room?

21 A Not directly. You have to walk a little
22 bit and it's right there.

- 1 Q Can you see it, if you walk out of the
2 ladies' room, can you see the little lockup room?
3 A No, because there's like a Xerox room, a
4 Xerox and water fountain. Then you walk up and
5 there's the bathroom right there.
6 Q There's a corner you have to walk around?
7 A Right.
8 Q From the men's room, can you see --
9 A You can see.
10 Q Is the men's room across the hall from the
11 big lockup room?
12 A It's across the hall from the little lockup
13 room.
14 Q Do you know that the little lockup room is
15 the First Lady's suite?
16 A Yes.
17 Q Do you know whether the big lockup room is
18 the White House counsel's suite? Do you know whether
19 it's the attorneys' suite?
20 A No.
21 Q Do you know by whom it's occupied?
22 A No.
-

- 1 Q Do you know any of the employees that have
2 offices in the big lockup room?
3 A Not until that night when they say that
4 man, Mr. Foster --
5 Q Did you know Mr. Foster?
6 A I never seen him in the office.
7 Q Never?
8 A That night people was in there then.
9 Q People were in the office, in the big
10 lockup room the evening of July 20, 1993?
11 A Uh-huh.
12 Q How is it that you recall that?
13 A Excuse me?
14 Q How do you remember that? What triggers
15 your memory of the events occurring on July 20, 1993?
16 A Because the lockup doors usually be locked
17 but it wasn't locked. The door was open. People was
18 in there working.
19 Q Let's back up a little. On July 20, 1993,
20 do you recall what time approximately you went up to
21 the second floor of the west wing? I believe you
22 testified that generally it was about 10:00 that you

1 went up to the second floor?

2 A It could have been.

3 Q Do you recall whether at any time -- well,
4 strike that.

5 Do you recall on July 20, 1993 whether you
6 went directly to your bathrooms to clean them or you
7 went to the big lockup or the little lockup to help
8 Ms. Walters?

9 A I know I went to the bathroom first because
10 I pushed my carts to the bathroom. I opened the
11 door. Then most likely I pulled the trash first in
12 there.

13 Q About how long does it take to pull the
14 trash in the bathroom?

15 A It doesn't take too long. There's only one
16 trash can in there.

17 Q Do you recall what other -- anything else
18 that you did in the bathroom that night,
19 cleaningwise, on the evening of July 20, 1993?

20 A I had cleaned both of my bathrooms before I
21 left the second floor.

22 Q Was there a time when you stopped cleaning

1 your bathrooms to go help Ms. Walters?

2 A When the escort got up there.

3 Q Who was the escort on July 20, 1993?

4 A O'Neill.

5 Q Do you know Mr. O'Neill?

6 A Uh-huh.

7 Q Do you know him by sight?

8 A Huh-uh.

9 Q Do you know what he looks like?

10 A Uh-huh.

11 Q Could you describe what he looks like?

12 A Kind of -- chubby to me, chubby.

13 Q Is he short or tall?

14 A In between; mixed gray hair, I guess.

15 Q Gray hair? Was he the regular escort on
16 the second floor during your shift of the second
17 floor of the west wing?

18 A For that night?

19 Q Not for that night, but generally, was he
20 the escort that generally came up to the second floor
21 with Ms. Walters?

22 A No, I think he was just there for that

1 night.

2 Q Just that night?

3 A I think, yeah.

4 Q How well did you know Mr. O'Neill as of
5 July 20, 1993?

6 A Well, he was the escort when I first came
7 to the White House. He was the first escort and I
8 think he would be the escort for three years.

9 Q Did you have regular conversations with
10 Mr. O'Neill as of July 20, 1993?

11 A Say that again?

12 Q Did you have regular conversations with him
13 as of July 20, 1993? Did you talk to him a lot
14 during that period of time?

15 A Uh-huh. That night you're talking about?

16 Q Prior to that night. I'm just trying to
17 get a sense of how well you knew him.

18 A No, not that night I didn't.

19 Q You had spoken to him before that night?

20 A Well, you know, when he would come on the
21 floor, he would speak or whatever, how was your
22 weekend or whatever.

1 Q But you had seen him generally around the
2 White House quite a few times prior to July 20, 1993?

3 A Right.

4 Q Do you recall about what time he came up to
5 the second floor of the west wing on the evening of
6 July 20, 1993?

7 A I really don't know because I'll be in the
8 bathroom. I can hear Diann when she started pulling
9 trash. Then I just go in there and started helping
10 her. I don't really look at the time or whatever,
11 but I know we'd be up on the second floor before
12 10:00. But I think their roll call -- he don't get
13 over there -- he don't get over there until 10:00.
14 He'd get there later than that because their roll
15 call was at 10:30.

16 Q You believe it's sometime after 10:30 --
17 off the record.

18 (Discussion off the record.)

19 BY MS. FISHER:

20 Q After you went into the bathrooms on the
21 second floor of the west wing that evening, could you
22 tell me what you remember next from July 20, 1993? I

1 believe you testified that you pulled the trash, and
2 then what else can you recall?

3 A I know the only thing we did was pull
4 trash.

5 Q In the bathrooms?

6 A No, in the lockups.

7 Q How was it you went from the bathrooms down
8 to the lockups?

9 A Say that again?

10 Q What caused you to go down to the lockups?

11 A Because Diann was going in her lockups.
12 Once she goes in there, I go in there and help her.

13 Q How did you know she was --

14 A Because my cart would be on the outside and
15 I have to go back and forth to get stuff from my cart
16 to take in the bathroom to clean the bathroom.

17 Q You saw her going in?

18 A Going in.

19 Q Was Mr. O'Neill with her?

20 A Uh-huh.

21 Q Did you see him open the door for her, or
22 was the door already open?

1 A Already open.

2 Q It was already open. So what do you recall
3 next?

4 A All I know is we went in there and pulled
5 trash and I don't know if I had left the second floor
6 or if I stayed on the second floor. Some lady, she
7 asked us did we pull that trash and we told her yeah.

8 Q Do you know who that woman was?

9 A I don't know her.

10 Q What does she look like?

11 A She got curly hair about right here.

12 Q What color?

13 A Blonde.

14 Q Do you remember what she was wearing?

15 A No.

16 Q Do you recall whether she was short or
17 tall?

18 A Kind of tall.

19 Q Do you recall whether she was thin?

20 A Uh-huh.

21 Q Do you recall whether she was a white
22 woman?

1 A Uh-huh.

2 Q She was?

3 A Uh-huh.

4 Q Tell me what you recall about the
5 conversation that you had with her.

6 A Well, she just asked did we pull that trash
7 and we told her yeah, and she wanted that trash out
8 of that man -- Mr. Foster -- and I told Diann --
9 Diann did the big lockup and I told her I know what
10 trash it was because I had pulled that little room
11 for Diann, because I remember because there wasn't
12 but a blue little tablet on there. There wasn't
13 nothing in there but a tablet or booklet or whatever,
14 so we tied it up and put it in a big black trash bag.

15 MR. COLE: I'm sorry, I don't mean to
16 interrupt, but I couldn't really hear what you said.
17 Did you say there was a tablet or booklet in the
18 trash?

19 THE WITNESS: Uh-huh.

20 MR. COLE: I'm sorry, I just couldn't hear.

21 BY MS. FISHER:

22 Q I want to back up. Where was it that this

1 conversation took place?

2 A It was in the hallway.

3 Q And she approached you, this woman?

4 A Us.

5 Q You were standing with Ms. Walters?

6 A Uh-huh.

7 Q And she asked you had you pulled the trash
8 from Mr. Foster's office?

9 A I don't know if she mentioned his name or
10 not, for real.

11 Q What do you recall that she said?

12 A Did we start pulling trash in there or did
13 we pull trash, I can't remember.

14 Q From the big lockup room?

15 A From the big lockup room.

16 Q Did you show her where the trash was?

17 A Uh-huh.

18 Q Did you show her which trash came from the
19 big lockup room?

20 A Yeah.

21 Q Did you show her which trash came from this
22 particular office in the big lockup room?

1 A Yeah, because I had pulled the trash and I
2 remember it was a light blue tablet, and I don't know
3 if she asked for it -- I don't know if she said his
4 name or whatever. She wanted that trash out of that
5 room so I just pulled -- we went in the big plastic
6 bag, and I told Dana or whoever was around that I
7 think this was it because I remember the blue
8 tablet. And I don't remember what she did with it.

9 Q Would you describe in detail the blue
10 tablet?

11 A It was a light blue tablet.

12 Q With light blue paper?

13 A I don't know. I was seeing the outside of
14 it. I didn't open it up.

15 Q Was it a file folder?

16 A No, it was like a tablet like.

17 Q Something like this?

18 A No, it had the ridges on the end.

19 Q A notebook?

20 A No, not a notebook.

21 Q Was it something with three holes?

22 A It had like -- you're talking about like

1 this?

2 Q Yes.

3 A No, the black thing down like this, and it
4 was just -- I don't know what it was. It was a blue
5 tablet.

6 Q Blue on the outside?

7 A Uh-huh.

8 Q With paper on the inside?

9 A I don't know. I just seen the outside.

10 Q Just seen blue on the outside?

11 A We pull the bag. We don't go inside the
12 bag.

13 Q Was there anything else in the bag?

14 A I don't know. There could have been,
15 underneath that tablet. I don't know.

16 Q Do you recall that the office, Mr. Foster's
17 office within the big lockup suite, do you recall
18 whether there were two trash buckets in that office
19 or one trash bucket in that office?

20 A I think there'd be two in there, I think.

21 Q Do you recall whether there was trash in
22 the other basket that night?

1 A I don't know. It must, because I only
2 pulled one bag.

3 Q You only pulled one bag for the woman?

4 A Uh-huh.

5 Q Did you give that bag to her?

6 A I think I did.

7 Q Did she take it?

8 A I think.

9 Q Do you know where she took it to?

10 A No.

11 Q Do you know whether she took it back into
12 the big lockup offices?

13 A No, because when I gave her the bag and
14 stuff, we left the second floor and went to the first
15 floor. I wasn't paying no attention to what she was
16 doing with it because I didn't know what was going
17 on.

18 Q Do you know -- what do you mean that you
19 didn't know what was going on? Was something unusual
20 going on on the second floor?

21 A No -- I mean, you know, people was up there
22 working. Not in that man's office.

1 Q In that big lockup office?

2 A Yeah.

3 Q In the -- can you tell me what you remember
4 about people being in there?

5 A I didn't see anyone in that man's office
6 where I pulled the trash out but there were people in
7 the office, though.

8 Q Can you do me a favor? Draw me a diagram
9 of what the big -- can we mark this as Exhibit 1.

10 (Cobey Exhibit 1 identified.)

11 BY MS. FISHER:

12 Q Can you draw a picture of what you remember
13 about the big lockup room, where the desks were and
14 where the rooms were, as best you can.

15 A When you first walk in, there's a desk
16 right there and a desk behind that one. There's four
17 desks when you first walk in. And then an office
18 back here and a desk back there. And there's a big
19 office back here.

20 Q Where is the door to the suite?

21 A Right here, coming off the elevator.

22 Q Will you mark a D where the desks are that

1 you've drawn. And are one of those rooms
2 Mr. Foster's office?

3 A This is another room. This is out front of
4 the big lockup. Then you have to go through this
5 room to do that in there, and on the other side of
6 that is the big lockup. It's bigger than the rest of
7 them.

8 Q There's a bigger office within the lockup?

9 A Right.

10 Q Is there a door on that office?

11 A Uh-huh.

12 Q Is there a lock on that door?

13 A No, that door be open.

14 Q That door was open?

15 A All the doors was open.

16 Q Do you know whether there was a lock on the
17 door to Mr. Foster's office?

18 A No. That door was open because I went in
19 there and pulled the trash.

20 Q Do you ever recall a time when that door
21 was locked or do you recall whether it was even
22 capable of being locked?

1 A I really don't know because the Secret
2 Service, he goes in the room first.

3 Q Did you see him open Mr. -- Mr. O'Neill
4 open the offices that evening?

5 A No.

6 Q Did you see him open the big lockup that
7 evening?

8 A No.

9 Q So when you got there, he was already in
10 there and Ms. Walters was already in there?

11 A Right.

12 Q And you pulled the trash out of
13 Mr. Foster's office?

14 A It was the four offices. Diann pulled two
15 and I pulled two. She took this side and I took that
16 side.

17 Q Did you conduct any other activity within
18 Mr. Foster's office?

19 A No.

20 Q Did you normally help her clean the offices
21 as well as pull trash?

22 A Uh-huh.

1 Q But you didn't help her clean the offices
2 that evening?

3 A When people are in the office, all we do is
4 pull trash.

5 Q Tell me all you remember about people in
6 the office that evening.

7 A Sitting down working.

8 Q There's somebody at the desk?

9 A Uh-huh.

10 Q Which desk? Could you just mark a circle
11 which desk you believe somebody was sitting at that
12 evening on July 20, 1993?

13 A I'm not sure. I might be wrong. It might
14 be that one.

15 Q Do you recall the person that was sitting
16 at that desk, what they looked like?

17 A No.

18 Q Do you recall whether it was a man or a
19 woman?

20 A No, I can't.

21 Q Was there anybody else in this big lockup
22 suite that evening when you were in there?

1 A No. I mean, all I know is people was in
2 and out and people was working. See, I really paid
3 no attention to what they were doing. We go in and
4 do what we're doing.

5 Q Do you remember anybody crying in that
6 office that evening?

7 A No.

8 Q Do you recall anything about anyone in the
9 office that evening?

10 A In that office?

11 Q In that office.

12 A Huh-uh.

13 Q Was anybody sitting in Mr. Foster's office
14 when you pulled the trash that evening?

15 A No.

16 Q Later in the evening, did you see anyone
17 sitting in Mr. Foster's office?

18 A I didn't go back in there.

19 Q Were you on the second floor later that
20 evening?

21 A No.

22 Q Going back to the incident with the trash,

1 you pulled the trash and you put it into a big bag
2 which was then put -- which was in the hallway; is
3 that correct?

4 A Right. Right by the -- it was on the
5 second floor by the elevator.

6 Q Do you recall anything other than a blue
7 tablet being in that trash?

8 A No, I don't.

9 Q Do you recall whether the woman that you
10 spoke with took that bag of trash?

11 A Yeah.

12 Q Do you recall where she took it?

13 A No.

14 Q Do you recall what you did after that
15 conversation?

16 A Who, me?

17 Q Yes.

18 A I think we left the second floor and went
19 on the first floor.

20 Q Do you recall why you left?

21 A Because we were saying there was too many
22 people up there, we couldn't do anything so I went on

1 the first floor to do the bathrooms.

2 Q Ms. Walters left with you?

3 A I think so.

4 Q Do you recall whether Mr. O'Neill left with
5 you?

6 A Yeah, I think he was on the first floor
7 with us, yeah.

8 Q Do you recall anybody saying anything about
9 why you were leaving the second floor or anybody
10 directing you to leave the second floor?

11 A I think that he was the one that said we
12 had to leave the floor because we couldn't do
13 anything because there was a lot of people up there.

14 Q Do you recall approximately what time that
15 was?

16 A Huh-uh.

17 Q Was it normal for that many people to be up
18 there --

19 A No.

20 Q -- in the evening when you were cleaning?

21 A No.

22 Q Do you recall how many people were up

1 there?

2 A That night, no. I don't know how many
3 there were.

4 Q Do you recall whether there was a man up
5 there that evening?

6 A Yeah.

7 Q Do you recall what he looked like?

8 A This guy, I guess he worked same hours we
9 do because he'd be up there all the time.

10 Q Was he someone who occupied the office
11 generally?

12 A He don't work in no lockups, though.

13 Q Do you know who he was?

14 A His name is Gene. We call him Gene.

15 Q Was there another gentleman up there on the
16 second floor that evening?

17 A I don't know.

18 Q Do you recall any women up there on the
19 second floor that evening?

20 A Uh-huh.

21 Q Do you recall what they looked like?

22 A Well, I ain't paying no attention. I think

1 I saw one black lady up there.

2 Q Do you recall what she looked like, what
3 her hair looked like?

4 A Huh-uh.

5 Q Do you recall whether she was a young woman
6 or an old woman?

7 A It's in between.

8 Q Had you ever seen her before?

9 A No.

10 Q Do you recall whether her name was Maggie
11 Williams, Margaret Williams?

12 A Oh, I don't know none of the names because
13 we see Gene all through the week. We just speak to
14 him. I don't know their name. You know, we'll speak
15 but I don't know their names.

16 Q Can you think of any other description
17 about this woman that you saw, anything else that
18 would describe her?

19 A Huh-uh.

20 Q When you saw her, do you recall what she
21 was doing?

22 A Let me see -- well, they was like walking

1 back and forth, in and out the office.

2 Q What office?

3 A That big lockup, and the First Lady's.

4 Q They were in the First Lady's office as
5 well?

6 A Uh-huh.

7 Q So the First Lady's office door was open?

8 A Was open, too.

9 Q And the big lockup door was open and there
10 were people going back and forth from office to
11 office?

12 A I don't know what they was doing because I
13 didn't pay no attention.

14 Q Do you recall how long they were up there?

15 A No, we left.

16 Q And you don't recall what time it was you
17 left to go to the first floor?

18 A Huh-uh.

19 Q Do you recall what time you returned to the
20 second floor?

21 A I don't think I went back to the second
22 floor. If I did, it was really late that morning to

1 help Diann finish up and if I did, I don't remember.

2 Q Do you recall whether you finished up
3 cleaning those offices that evening?

4 A I can't remember. We might have went back
5 in there. I don't know.

6 Q Do you recall Mr. O'Neill ever letting you
7 back into those offices that evening?

8 A Can't say.

9 Q Do you recall whether you cleaned the First
10 Lady's office that evening, July 20, 1993? You don't
11 recall whether you did or didn't?

12 A Huh-uh.

13 Q Do you recall whether you went in there at
14 all that evening?

15 A I can't remember going in the First
16 Lady's -- I don't think we went in there to pull
17 trash. I'm not sure. I don't know.

18 Q Do you recall anything else about the
19 people that were in and out of the First Lady's
20 office and the other big lockup suite of offices that
21 evening? Do you recall whether it was two women or
22 three women?

- 1 A Oh, I don't know.
- 2 Q Do you remember whether it was a
- 3 gentleman -- was Gene one of the gentlemen?
- 4 A No, I'd see him like in the hallway.
- 5 Q But you didn't see him going in between
- 6 offices?
- 7 A No, I didn't.
- 8 Q Was there another gentleman that you saw
- 9 that evening? Did you see anyone carrying any boxes
- 10 that evening?
- 11 A No.
- 12 Q Did you see anyone carrying any files that
- 13 evening?
- 14 A Huh-uh.
- 15 Q Did you see anyone crying that evening?
- 16 A I think someone was crying. I think that
- 17 black lady was crying. I'm not for sure.
- 18 Q Do you recall speaking to her at all?
- 19 A Huh-uh.
- 20 Q Do you recall learning that Mr. Foster had
- 21 committed suicide that evening?
- 22 A Yeah, later on that night.
-

- 1 Q Do you recall who told you?
- 2 A I heard GSA people talking about it.
- 3 Q Do you recall about what time that was?
- 4 A No, huh-uh.
- 5 Q What do you recall them saying?
- 6 A I don't know the exact words.
- 7 Q Generally, what is your recollection?
- 8 A That that man committed suicide or
- 9 whatever.
- 10 Q Do you recall anything else being discussed
- 11 about that?
- 12 A Huh-uh.
- 13 Q Do you recall seeing anyone take anything
- 14 out of the big lockup suite of offices that evening,
- 15 July 20, 1993?
- 16 A Huh-uh.
- 17 Q Do you recall seeing anyone take anything
- 18 out of the First Lady's suite of offices on that
- 19 evening?
- 20 A Huh-uh.
- 21 Q Do you recall seeing the woman that you
- 22 identified earlier, the African-American woman that

1 you think may have been crying, do you recall seeing
2 her anywhere else in the White House that evening
3 other than in the big lockup suite of offices?

4 A Huh-uh.

5 Q Later that evening in the elevator, down on
6 the first floor?

7 A Let's see -- they might have been on the
8 first floor. I don't --

9 Q Do you recall seeing them on the first
10 floor?

11 A No.

12 Q Do you recall seeing any activity on the
13 first floor that evening?

14 A Huh-uh.

15 Q Just on the second floor?

16 A Uh-huh.

17 Q And it's your testimony that you don't
18 recall seeing anyone carrying anything out of that
19 suite?

20 A Huh-uh.

21 Q Do you recall talking to Mr. O'Neill about
22 the activity up on the second floor that evening?

1 A I don't know. We might have asked him what
2 happened. I don't know.

3 Q Do you recall what he told you?

4 A No, I sure don't.

5 Q I just want to go back and make sure I have
6 a good understanding of the events as you recall
7 them. You believe you arrived at work and went to
8 the Old Executive Office Building, and that was about
9 9:45?

10 A Uh-huh.

11 Q And then you recall going over to the west
12 wing and arriving there about 10:00?

13 A On the second floor, yes.

14 Q Arriving on the second floor at 10:00?

15 A Right.

16 Q And then you believe that you went and
17 cleaned the bathrooms on the second floor?

18 A I don't know if I cleaned the whole entire
19 bathroom before I went in and helped Diann or not,
20 but I know I was in the bathroom first.

21 Q Were you in the men's bathroom or women's?

22 A The men's.

- 1 Q Do you go and generally do the men's first?
2 A (No verbal response.)
3 Q Do you recall going in the big lockup after
4 that?
5 A Right.
6 Q And Mr. O'Neill was there?
7 A Him and Diann was already there.
8 Q Were there other people already in there?
9 A Uh-huh.
10 Q And you recall one person sitting at a
11 desk; is that correct?
12 A Yeah.
13 Q And where were the other people, were they
14 in the big office?
15 A It was like walking back and forth, in and
16 out of the office and in the hallways and stuff.
17 Q What rooms were they in?
18 A In the first part of the big lockups.
19 Q Were they back in either of the offices
20 part of the big lockup?
21 A I didn't see nobody back there.
22 Q And they were in the First Lady's suite as
-

- 1 well?
2 A Uh-huh.
3 Q And there was at least one woman, and you
4 believe -- do you have a sense of how many people
5 were there, three, five?
6 A See, I couldn't tell you because it was
7 like back and forth.
8 Q Approximately?
9 A No. I guess about three to four.
10 Q How long did you spend in the big lockup?
11 A Just enough time -- I guess about -- it
12 doesn't take long to pull four trash cans. All we
13 did was pull the trash.
14 Q And then you left?
15 A We left.
16 Q And then what did you do with the trash?
17 A Put in a big plastic bag on the outside.
18 Q And then what did you do?
19 A I think -- that lady -- I don't know if she
20 asked me that on the second floor or came in on the
21 first floor and asked me. I can't remember. She
22 wanted to know did we pull the trash in there.

1 Q And then did you show her where the trash
2 was?

3 A Yeah.

4 Q Do you recall going back up to the second
5 floor to show her where the trash was or were you
6 already on the second floor?

7 A The trash -- yeah, the trash had to be on
8 the second floor because we don't take the trash from
9 one floor to another.

10 Q Do you recall walking upstairs or going up
11 in the elevator with this woman?

12 A Elevator.

13 Q You went up the elevator with this woman?

14 A Uh-huh.

15 Q Was she carrying anything at this time?

16 A I didn't see anything.

17 Q Do you recall that you showed her where the
18 trash was in the hallway?

19 A Uh-huh.

20 Q And there was a blue tablet, I believe,
21 that you testified to. Do you recall any receipts or
22 credit cards or papers or anything like that in the

1 trash that evening other than the blue tablet?

2 A I don't, but I'm not saying that it
3 couldn't have been because anything could have been
4 underneath that tablet. That was the only thing I
5 seen, was the tablet.

6 Q And you believe the trash was light?

7 A Uh-huh.

8 Q Then did you go back into the big lockup
9 suite of offices after you had that conversation with
10 that woman?

11 A No.

12 Q Did you understand that you were not
13 supposed to go back into those offices?

14 A We can't go in there anyway without an
15 escort.

16 Q So Mr. O'Neill was no longer there?

17 A No, we didn't go back in there.

18 Q But the door was still open?

19 A Yeah.

20 Q And the door to the First Lady's suite was
21 still open?

22 A I think, yeah.

1 Q So what did you do next?
2 A We just left, went back on the first floor.
3 Q The elevator or the stairs?
4 A Elevator.
5 Q And then did you clean the bathrooms on the
6 first floor or was this during a break?
7 A I think we went to break.
8 Q And how long were you at break?
9 A We go to break from 11:30 to quarter to
10 12:00.
11 Q And do you recall that you went on break
12 right after you spoke with the woman on the second
13 floor?
14 A I don't know.
15 Q Do you believe that that's so?
16 A I don't think we went right on break.
17 Q Shortly thereafter?
18 A Probably, yeah.
19 Q While you were on break between 11:30 and
20 11:45, did you speak to anyone about the activity
21 that was going on on the second floor?
22 A No, I didn't, no.

1 Q Do you recall ever having a conversation
2 with anybody at the White House about papers being
3 removed from the big lockup suite of offices on the
4 night of July 20, 1993?
5 A Huh-uh.
6 Q Do you remember seeing anybody carrying
7 anything out of those offices on the night of July
8 20, 1993, anything at all?
9 A I could have. I mean --
10 Q When you went up initially to the second
11 floor and you went into the bathrooms to clean, did
12 you notice that anyone was on the second floor? Was
13 there anybody else on the second floor when you
14 initially went up to clean the bathrooms?
15 A Uh-huh.
16 Q The same people in these offices that were
17 there? How do you know that?
18 A People was in and out, walking back and
19 forth. There was people up there.
20 Q They were already up there when you got
21 there at 10:00 approximately?
22 A Yeah.

- 1 Q And Mr. O'Neill was already up there?
2 A No, not that I saw, no.
3 Q Were there people walking in the halls at
4 that time? Did anyone come into the bathroom while
5 you were cleaning it?
6 A I don't know.
7 Q Did you see anyone walk past you in the
8 hallway?
9 A Yeah, people was walking back and forth.
10 Q But you don't recall what they looked like?
11 A Huh-uh, I don't pay no attention.
12 Q But they were at 10:00 when you initially
13 we want in?
14 A People was already there.
15 Q The same people that was in the big lockup
16 room. And you stayed up there and cleaned the
17 bathroom and you went to help Diann pull the trash
18 while people were in the office. Did you ever hear
19 any conversations that were taking place in that
20 office that evening?
21 A No.
22 Q Do you recall whether anybody was in

- 1 Mr. Foster's office when you pulled the trash from
2 his office that evening?
3 A No, but I don't think nobody was in there.
4 Q How long did you spend in the bathroom that
5 evening before you went into the big suite of
6 offices?
7 A I know when I first get up on the floor I
8 go straight in the bathroom, fix my water and stuff.
9 I don't know exactly what time. But when I see Diann
10 goes in her lockups, I goes in there and help her.
11 Q When you go into the suite of offices, who
12 is it you see, a woman or a man on the second floor
13 that evening, do you recall? Just people milling
14 about?
15 A Yeah, it was just people.
16 Q But you don't remember anybody carrying
17 anything?
18 A Huh-uh.
19 Q Do you remember more than one woman crying?
20 A No.
21 Q Do you recall when you found out that
22 Mr. Foster had died that evening?

1 A That night, I know, before we got off.

2 Q But do you recall whether it was after your
3 break at 11:30?

4 A I think so. I think.

5 Q Do you remember going back up to the second
6 floor after your break at 11:30?

7 A No.

8 Q Do you remember Ms. Walters telling you
9 anything about what occurred on the second floor that
10 evening?

11 A No.

12 Q Do you recall Mr. O'Neill discussing
13 anything that happened on the second floor that
14 evening? When you went down to the first floor to
15 take your break, did Mr. O'Neill go with you?

16 A No, he don't go with us when we go on our
17 break.

18 Q When you went into the suite of offices to
19 pull the trash, was Mr. O'Neill there?

20 A In the lockup.

21 Q He was there?

22 A Uh-huh.

1 Q And other people were there?

2 A Yeah.

3 Q Was he talking to anyone?

4 A I don't know.

5 Q But you don't recall whether he left with
6 you. Did he stay there after you left the second
7 floor?

8 A I don't think so -- I don't know.

9 Q Did you ever hear anything at the White
10 House about any removal of papers from Vince Foster's
11 office on the night of July 20, 1993?

12 A No.

13 MS. FISHER: I don't have any further
14 questions. Thank you.

15 EXAMINATION

16 BY MR. COLE:

17 Q Ms. Cobey, my name is Lance Cole and I'm
18 one of the lawyers for the Democrats on the
19 committee, and I'd like to ask you a few more
20 questions. We'll try not to take any more of your
21 time than necessary. But this is kind of
22 complicated, and I need some help understanding

1 exactly what happened.

2 At the time that you arrived at the west
3 wing of the White House on the night of July 20th,
4 the first thing you did was to go up to the second
5 floor and begin cleaning the bathrooms; is that
6 correct? Can you say yes or no so the court reporter
7 can enter that?

8 Do you take your cleaning cart up with you
9 to clean the bathrooms?

10 A Yes.

11 Q Do you take the elevator?

12 A Yes.

13 Q Do you take the cart up in the elevator?

14 A Yes.

15 Q And is the elevator you use the one that's
16 next door to the doors of the big locked up office?

17 A That's the only elevator.

18 Q There's not a separate service elevator?

19 A No.

20 Q So that's the only elevator. Do you
21 recall, when you got off the elevator that night with
22 your cart beside those doors, were they open or

1 closed?

2 A I think they was open because people was in
3 there working.

4 Q So when you got off the elevator, you saw
5 that the doors were open and people were inside
6 working? Were the lights in the hallway in front of
7 the elevator on or off?

8 A I don't know.

9 Q You don't remember. Are they normally on
10 or off at that time of night?

11 A On.

12 Q They're normally on at that time of night?

13 A Uh-huh.

14 Q And I need a little help understanding how
15 many people you saw in that office at that time. I
16 believe you've testified that there was one person
17 sitting at a desk?

18 A Uh-huh.

19 Q Were there more people than the one person
20 at the desk, as best you recall?

21 A I don't know.

22 Q And did you go directly, then, to begin to

- 1 clean the men's bathroom; is that correct?
2 A Right.
3 Q And where's the men's bathroom?
4 A It really is right -- you can see the men's
5 bathroom from both the lockups. It's really from
6 both of the lockups.
7 Q Is it on the opposite side of the hall?
8 A No, same side.
9 Q Same side of the hall?
10 A Uh-huh.
11 Q Opposite end from the elevator?
12 A Well, you get off the elevator. You have
13 to walk down a little bit.
14 Q Is it past the First Lady's office?
15 A No. It's really directly right in front
16 across from the First Lady.
17 Q It's across the hall from the First Lady's
18 office?
19 A Uh-huh.
20 Q Did you push your cart down to the
21 bathroom?
22 A Yeah.
-

- 1 Q The men's bathroom, I should say. At the
2 time you pushed your cart down to the men's bathroom,
3 do you remember whether the door to the First Lady's
4 office was open or closed?
5 A I remember both of them was open. I think
6 both of them was open.
7 Q Do you remember if anyone was in the First
8 Lady's office?
9 A Yeah, people was in and out -- yeah.
10 Q During the time that you pushed your cart
11 from the elevator down the hall to the men's
12 bathroom, you think you saw people in and out of both
13 of those offices?
14 A Yeah.
15 Q How many people?
16 A I guess about three or four.
17 Q Were they together or separate, the three
18 or four people that you saw?
19 A Like walk together, something like that?
20 Q Yes. Was it three or four people in a
21 group?
22 A No.

1 Q Was it three or four separate people that
2 you saw?

3 A I didn't see no night crew there.

4 Q So as best you can remember, and I
5 understand this is a long time ago, and it's very
6 hard to do, but any help you can give us is
7 appreciated. The three or four people that you saw,
8 can you tell us where they were when you saw them?

9 A Well, we were coming out of one office and
10 another office, walking in the hallways and stuff
11 like that.

12 Q Were they acting strangely?

13 A Not really, no. The first time I seen
14 them -- because they're not usually up there so I
15 don't know.

16 Q Did you see anyone crying at that time?

17 A I don't know. I mean, I don't know if it
18 was at that time, but I know I seen her -- I think
19 that black lady was crying. I'm not for sure.

20 Q Do you think you saw the black lady at that
21 time, which is when you first came up to clean the
22 men's bathroom?

1 A I don't think when I first came up, no.

2 Q So you don't think you saw her. Were the
3 other people that you saw black or white?

4 A White.

5 Q Men or women?

6 A Well, I seen mostly women. I don't know.
7 There could have been some men in there.

8 Q So you think you saw three or four people,
9 and you think that the black lady that you later saw
10 crying was not one of the three or four people and
11 you think that they were mostly women. Am I getting
12 that right?

13 A Yeah.

14 Q And were they -- were any other offices
15 open other than the two lockup offices that you could
16 see that night?

17 A All the other offices -- I mean, they're
18 always open. And by "open," I mean the door is
19 opened with the lights on.

20 Q The three or four people that you saw, were
21 they coming and going from the two locked-up offices
22 or were they going and coming from the other offices

1 on the west wing?
2 A I think they were coming from other offices
3 too.
4 Q Was Gene one of the people that you saw?
5 A I saw him in the hallway.
6 Q Was he one of the three or four people you
7 saw?
8 A Uh-huh.
9 Q Do you know a gentleman named Howard
10 Pastor?
11 A No.
12 Q Do you know the name of anyone else who
13 works on the second floor of the west wing?
14 A In the office, no, I don't.
15 Q Do you know that the First Lady has an
16 office?
17 A Right.
18 Q And I assume you would recognize her if you
19 saw her?
20 A Right.
21 Q Did you see her that night?
22 A No.

1 Q Did you recognize the other people that you
2 saw that night as people who worked in the White
3 House?
4 A Well, that's the first time I seen them. I
5 guess they worked there. They was in and out of the
6 office, walking in the hallway.
7 Q Did you notice whether they were wearing
8 White House passes?
9 A Oh, I don't know.
10 Q You don't normally look for whether people
11 are wearing White House passes?
12 A No.
13 Q Not your job; right?
14 A No.
15 Q And so is the next thing that you remember
16 that you went and began to clean the men's bathroom?
17 A Uh-huh.
18 Q Up to that time, when you went in to clean
19 the men's bathroom, had you seen anyone carrying
20 anything at all?
21 A No.
22 Q So the people were just walking around in

1 the various offices on the second floor?

2 A Yeah. I ain't seen them carrying
3 anything. I wasn't paying attention. I was
4 concentrating on cleaning the bathroom.

5 Q You're not sure if you finished cleaning
6 the men's bathroom before you finished pulling the
7 trash from the locked-up offices. Did I get that
8 right?

9 A Right.

10 Q Which locked-up office did you pull the
11 trash from first?

12 A That big lockup.

13 Q The big one by the elevator?

14 A Uh-huh.

15 Q And which trash bags did you pull?

16 A Well, there's like four desks in the front
17 and Diann pulled -- I don't know which one it was but
18 she pulled two bags and I pulled two. And she took
19 the big lockup and I took the small lockup -- I mean
20 the smaller office.

21 Q The smaller of the two offices inside the
22 locked-up office?

60

1 A Right.

2 Q Did you know at that time whose office that
3 was?

4 A I don't know their names.

5 Q Let me ask it a different way. That night,
6 when you were pulling the trash from that small
7 office, did you know that the man who worked in that
8 office had committed suicide?

9 A No.

10 Q Is that something you would remember if you
11 had known it at the time?

12 A Uh-huh.

13 Q So you think it was later than that that
14 you learned that he had committed suicide?

15 A Right.

16 Q Did you and Diann go together into the big
17 locked-up office to begin pulling trash?

18 A No, her and him was in there before I was
19 because I was doing the bathrooms.

20 Q You were doing the bathrooms, they were
21 already in the big locked-up office?

22 A Uh-huh.

1 Q Who else was in there at that time?

2 A Some people. I don't know.

3 Q Can you give us any idea as to how many?

4 A I guess about two, three, four. I don't
5 know. I mean -- I don't mean to do that, but I don't
6 know for real.

7 Q We don't want you to guess. We want you to
8 give us your best memory, but don't guess and I know
9 it's very hard to remember.

10 Were all of those people in the area where
11 the four desks are or were some of them in the other
12 two offices in the larger locked-up area?

13 A I didn't do the large office over there. I
14 didn't see nobody in the little one when I pulled
15 trash. They could have went in there, but I don't
16 know.

17 Q During the time you were in there, you
18 didn't see anyone?

19 A I didn't see nobody, no.

20 Q You didn't see anyone going in or out of
21 there while you were pulling the trash?

22 A That room?

1 Q Yes.

2 A Huh-uh.

3 Q Could you see in the larger of the two
4 offices inside that area?

5 A When I was out front?

6 Q When you were pulling the trash from the
7 four desks, or when you were pulling the trash from
8 the --

9 A Yeah, you could see them. You could see
10 the office but I don't know if they went in there or
11 not.

12 Q You really can't remember whether anyone
13 was in the larger office at that time?

14 A Right.

15 Q At that time, did you notice anyone acting
16 strangely, crying, upset, anything like that?

17 A No.

18 Q So the only thing you knew at that time was
19 there was people there working which was unusual, but
20 you weren't aware that anything was wrong, or anyone
21 had committed suicide?

22 A Right.

- 1 Q And I believe you testified that there are
2 two trash bags in the smaller of the two offices?
3 A I think so.
4 Q Where are they located at that time --
5 where were they located?
6 A Right by that desk, both trash cans are
7 beside each other.
8 Q Two trash cans beside the desk. If you're
9 standing in the door looking toward the desk, are
10 they on the left or the right at that time, that
11 night?
12 A On the right.
13 Q And did you pull the bags from both or one?
14 A One.
15 Q And why did you only pull the bag from one?
16 A The other one was empty, I guess.
17 Q So as best you can remember, the other one
18 was empty? Am I correct in understanding that you
19 remember there was a blue notebook with a black
20 spiral binding in the trash bag that you pulled?
21 A Right.
22 Q How full was it, the bag?
-

- 1 A The trash bag wasn't heavy.
2 Q It wasn't heavy?
3 A No.
4 Q Had you pulled the trash from that office
5 before?
6 A Uh-huh.
7 Q Other nights?
8 A Uh-huh.
9 Q Was there more or less trash that night
10 than on a normal night?
11 A There would be more trash.
12 Q There was more trash that night than there
13 normally would be in that office?
14 A No, that night it was less trash.
15 Q So that night, there was more trash than
16 you normally found in that office -- I'm sorry, I'm
17 not trying to make this complicated. I'm trying to
18 understand what you can remember from that night.
19 Let me ask it a different way.
20 Were the trash bags in that office normally
21 full when you emptied them?
22 A Yeah.

1 Q Or nearly full?

2 A Right.

3 Q And on that particular night, you recall
4 that one was empty, you believe?

5 A Right.

6 Q And the other one was more or less than
7 half full, do you remember?

8 A It wasn't full. It wasn't heavy.

9 Q And the only -- and it wasn't heavy when
10 you pulled it?

11 A No.

12 Q And the only thing you remember about it
13 was the blue notebook with the black binding?

14 A Right.

15 Q Did the notebook have writing on the blue
16 cover?

17 A I don't know.

18 Q You don't remember? What made you remember
19 the blue notebook later when the lady asked about the
20 trash?

21 A Because it was so -- I mean, the trash bag
22 was light, and I just pulled it up and tied it up and

1 we just took it out in the hallway.

2 Q Did you do anything while you were inside
3 that office?

4 A No.

5 Q The next thing you did after you pulled
6 that bag and tied it up, you took it out and put it
7 in the larger bag in the hallway?

8 A Large black bag, right.

9 Q Did you go back into the lockup office
10 after that?

11 A No.

12 Q Had you already pulled the bags from the
13 two desks in the larger area?

14 A Yeah.

15 Q Was Diann still in the larger locked-up
16 office then?

17 A When?

18 Q When you brought the trash bag outside.

19 A Yeah, I guess. She was coming out around
20 the same time because she went that way and got that
21 bag and I went that way and got that bag, that's it,
22 and pulled it out.

1 Q Am I correct that the two of you didn't do
2 any further cleaning in that large locked-up office?
3 A No, but I don't know about later on.
4 Q At that time?
5 A Right.
6 Q Where was Officer O'Neill at that time?
7 A When we was in there?
8 Q Yes, when you were pulling the trash.
9 A He was in there. I don't know what he was
10 doing in there.
11 Q Was he in the area of the four desks or did
12 he go into one of the offices?
13 A I don't know.
14 Q What did you do next?
15 A When we got finished with the lockup?
16 Q When you finished pulling the trash from
17 the larger locked-up office, I believe you said you
18 didn't go back inside?
19 A No.
20 Q What did you do next?
21 A I don't know if I had finished the
22 bathrooms or not but if I didn't, I must have went

1 and finished the bathrooms. And I told Diann,
2 there's nothing we can do on this floor because
3 there's too many people, and left and went to the
4 first floor.
5 Q Had you pulled the trash from the First
6 Lady's office by that time?
7 A I can't remember if we pulled trash from
8 there or not.
9 Q You don't know whether you did or didn't?
10 A No.
11 Q Do you remember whether you went into the
12 First Lady's office that night?
13 A Huh-uh. I don't know. I might have. We
14 might have but I can't remember.
15 Q Were the only things that you did on the
16 second floor that night clean the bathrooms and
17 pulled the trash from the one large locked-up office?
18 A Right.
19 Q And perhaps the First Lady's office, but
20 you can't remember?
21 A Right.
22 Q Did you clean the ladies' room?

1 A I don't know. I can't remember.

2 Q You can't remember whether you cleaned the
3 ladies' room after you had finished pulling the
4 trash?

5 A Huh-uh.

6 Q Do you remember anything else before you
7 went downstairs to the first floor?

8 A No.

9 Q Did you see anything else unusual on the
10 second floor?

11 A Huh-uh.

12 Q Were there still people around at the time
13 that you went to the first floor?

14 A Yeah, they stayed up there.

15 Q Where was Officer O'Neill?

16 A I don't know because he got to go and pull
17 other burn trash. I don't know if he went down with
18 us or later came down with us later. I can't
19 remember.

20 Q Did he pull the burn trash from the large
21 locked-up office that night?

22 A I don't know.

1 Q Do you have any memory of him pulling any
2 burn bag trash from any of the burn bags in the large
3 locked up office that night?

4 A No, I can't remember. I don't know if he
5 pulled it or not. I don't know what Hank be doing.
6 I don't know. We goes in there and do what we got to
7 do. Especially when people are in there, we hurry up
8 and pull the trash. We don't be paying attention.

9 Q Do the Secret Service guards empty the burn
10 bags when people are in the offices working?

11 A Yeah, I guess. I don't know.

12 Q Do you know whether Officer O'Neill emptied
13 the burn bags from the First Lady's office that
14 night?

15 A I don't know. I don't know if we went in
16 there or not.

17 Q Did you push your cart back onto the
18 elevator then to take it to the first floor? Did you
19 take your cart with you?

20 A Uh-huh.

21 Q Do you remember when you pushed your cart
22 to the elevator, you would have pushed it past the

- 1 doors to the large locked-up office; is that correct?
2 A Yeah.
3 Q Did you see into the large locked-up office
4 when you did that?
5 A I mean, you can see in there, but I wasn't
6 paying no attention.
7 Q Do you have any recollection as to whether
8 there were any people?
9 A It was people still up there.
10 Q Had you seen the black lady that you
11 remember crying at that time?
12 A Might have been. I don't know. Might have
13 been around that time.
14 Q When you saw her crying, do you remember
15 where she was?
16 A I think she was standing by the elevator
17 talking to somebody. I don't know.
18 Q Was she talking to a man or woman?
19 A I think it was a lady.
20 Q Do you have any memory as to what the lady
21 looked like?
22 A Huh-uh.
-

- 1 Q Black or white?
2 A White.
3 Q Young or old, you can't remember? I think
4 it will make it easier if you say yes or no.
5 A Oh, sorry.
6 Q That would be a no?
7 A No.
8 Q At that time, did you take your cart and go
9 to the first floor to clean the bathrooms?
10 A Yeah.
11 Q Did you go back to the second floor that
12 night?
13 A I don't recall, no, I don't know.
14 Q At that point, if I'm understanding what
15 you're telling me correctly, you had not yet spoken
16 with the young woman about the trash; is that right,
17 or do you remember?
18 A Huh-uh, no.
19 Q You had not -- had you spoken with the
20 young woman about the trash by that point?
21 A Before I left the second floor?
22 Q Yes.

- 1 A I can't remember if I was on the second
2 floor or first floor, but I do know she asked for
3 that trash, that we pull that trash.
- 4 Q Did you take her to where the trash was?
- 5 A The trash was on the second floor. I don't
6 know if we went back up there or not -- we might have
7 told her where the trash bag was at. She might have
8 went in there by herself. I don't know.
- 9 Q Do you remember whether Mrs. Walters took
10 her to the trash?
- 11 A I don't know.
- 12 Q Did you tell her about the blue notebook?
- 13 A I told Diann about it.
- 14 Q You told Ms. Walters about the blue
15 notebook?
- 16 A Right. When she asked for that trash, I
17 said I think I remember that trash bag because I
18 pulled that room.
- 19 Q Did you say that to Ms. Walters or to the
20 young lady or both?
- 21 A There was other people around.
- 22 Q Was there anyone around other than you,

- 1 Mrs. Walters and the young lady?
- 2 A It was people walking around.
- 3 Q But the three of you were talking?
- 4 A Yeah.
- 5 Q She came up to the two of you and asked
6 about the trash?
- 7 A Right.
- 8 Q And you told her about the blue notebook?
- 9 A Right.
- 10 Q Do you have any memory of seeing the young
11 woman go to the trash?
- 12 A I can't remember.
- 13 Q So you can't remember whether you saw her
14 take anything out of the trash or not that night?
- 15 A Right.
- 16 Q Do you have any memory of seeing her with
17 the trash at any time that night?
- 18 A No.
- 19 Q Do you clean in the area of the chief of
20 staff's office on the first floor?
- 21 A Chief of staff -- what lockup room is
22 that?

1 Q It's one of the larger offices on the first
2 floor. I just wondered if you knew which one is the
3 chief of staff's office.

4 A I clean lockups on first floor before but I
5 don't know the name of them.

6 Q On that evening, do you remember seeing the
7 young lady who asked about the trash again later in
8 the evening after she asked you about the trash?

9 A No.

10 Q So that was the only time you remember
11 seeing her?

12 A That's the only time I remember, yeah.

13 Q Do you know what she did after you told her
14 about the trash?

15 A No.

16 MS. FISHER: Can we take a short break?

17 MR. COLE: Sure.

18 (Recess.)

19 BY MR. COLE:

20 Q I believe I was asking you, Ms. Cobey, if
21 you recalled what the young lady did after she asked
22 you about the trash that night, and you said you

1 don't remember; is that correct?

2 A That's correct.

3 Q Of the people that you saw on the second
4 floor of the west wing that night, including the
5 black lady that you think was crying at one point,
6 did you see any of those people down on the first
7 floor after you went back down there?

8 A I can't remember.

9 Q Did you see Gene on the first floor that
10 night?

11 A I don't think so, no.

12 Q Did you ever see Gene in the larger of the
13 two locked-up offices that night?

14 A No. See him in the hallway, see him in the
15 offices.

16 Q The people that were in the larger of the
17 locked offices, Gene was not one of those people?

18 A I didn't know if I had seen him.

19 MR. COLE: I don't think I have anything
20 further.

21 MS. FISHER: I don't have anything
22 further. Thank you so much more coming. I

1 appreciate it, on a hot day, on a Friday after you've
2 been working all night. We very much appreciate it.
3 We would ask that you keep the content and the
4 substance of the deposition confidential.

5 (Whereupon, at 6:00 p.m., the deposition
6 was concluded.)
7

8

9

TERRY LYNNETTE COBEY

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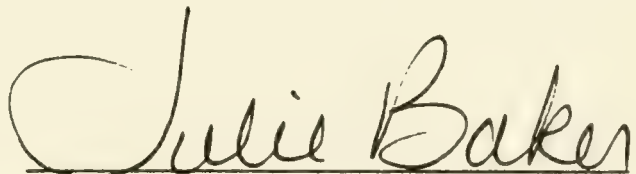
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I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

**COBEY EXHIBIT 1 WAS NOT PROVIDED
IN TIME FOR PUBLICATION**

**DEPOSITION OF WEBSTER L. HUBBELL
IN RE: S. RES. 120**

VOLUME II

FRIDAY, JULY 14, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

Deposition of WEBSTER L. HUBBELL, called for further examination pursuant to agreement by counsel, at 9:35 a.m. in Room 538 of the Dirksen Senate Office Building, before GARRETT J. WALSH, JR., Court Reporter, when were present:

APPEARANCES

EVERETT C. JOHNSON, JR., Esq.

Majority Deputy Special Counsel

NEAL E. KRAVITZ, Esq.

Minority Principal Deputy Special Counsel

U.S. Senate

Committee on Banking, Housing, and Urban Affairs

534 Dirksen Building

Washington, DC 20510

On behalf of the Committee.

LAURA S. SHORES, Esq.

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1299 Pennsylvania Avenue, NW

Washington, DC 20004-2402

On behalf of the Deponent.

CONTENTS

WITNESS**EXAMINATION****Webster L. Hubbell [Resumed]**

by Mr. Kravitz 139

by Mr. Johnson 169

1 PROCEEDINGS

2 Whereupon,

3 WEBSTER L. HUBBELL

4 was resumed as the deponent and, having previously
5 been duly sworn, was examined and testified further
6 as follows:

7 CROSS EXAMINATION

8 BY MR. KRAVITZ:

9 Q Mr. Hubbell, thank you for coming back
10 this morning. I want to ask you some follow-up
11 questions in some of the areas Mr. Johnson spoke with
12 you about yesterday.

13 And, I want to start with your testimony
14 toward the end of the deposition yesterday that up
15 until yesterday's deposition you had never heard that
16 the FBI conducted an obstruction of justice
17 investigation concerning the White House handling of
18 Mr. Foster's note; is that correct?

19 A That is correct.

20 Q Did you know before yesterday that the FBI
21 conducted an investigation, regardless of its title
22 but any investigation, into the White House handling

140

1 of Mr. Foster's note after its discovery?

2 A Not that I'm aware of other than, you
3 know, that Phil had been talking to Bernie. And, I
4 knew the FBI was working with Phil, but not any kind
5 of investigation.

6 Q When was it that you knew the FBI to be
7 working with Phil with regard to the White House
8 handling of Mr. Foster's note?

9 A My recollection, and subject to being
10 wrong, was that there were -- that after when they
11 were looking at the office I thought there were
12 people from the Park Police, people from Phil's
13 office and an FBI agent. I may have been wrong.

14 Q So, are you referring to actually the
15 review of the contents of Mr. Foster's --

16 A Yes.

17 Q -- office?

18 A Yes, yes, not any investigation.

19 Q Okay. So, you are referring -- your
20 knowledge of what the FBI's involvement was relates
21 to the review of the contents of Mr. Foster's office
22 on July 22nd, 1993; is that right?

1 A That's correct.

2 Q And, that was before the note was
3 discovered on July 26th, 1993?

4 A That's right.

5 Q So, is it your testimony that you have no
6 knowledge, other than what you've learned in this
7 deposition, that following the discovery of Mr.
8 Foster's note on July 26th, 1993, the FBI conducted
9 an investigation of the White House's handling of
10 that note?

11 A That's correct.

12 Q So, does it follow from that that you
13 never discussed with any White House official what
14 the FBI was doing over at the White House in
15 investigating the handling of that note?

16 A That's safe to say, since I didn't know
17 they were doing it.

18 Q And, you never spoke, then, with Nancy
19 McFadden of your office about concerns that White
20 House officials may or may not have had about the way
21 the FBI was conducting an investigation into their
22 handling of the note?

1 A Of the note, no.

2 Q And, just to complete the record, did you
3 ever direct Nancy McFadden to go speak with officials
4 of Mr. Heymann's office, the Deputy Attorney
5 General's Office, to express concerns that had been
6 expressed to you by White House officials that the
7 FBI was using the term, "obstruction of justice,"
8 while it was investigating the White House's handling
9 of the note?

10 A No.

11 Q Could you describe for us what you
12 understand the relationship between Mrs. Clinton and
13 Susan Thomases to have been as of July 1993?

14 A July 1993? I was aware that Susan and
15 Mrs. Clinton had been close friends. I believe they
16 went to college together.

17 Susan had been a supporter of President
18 and Hillary's for a long time and worked on cases
19 together when they were both at their respective law
20 firms and had been an advisor. And, then she worked
21 in the campaign, worked in the transition.

22 And, I would consider her one of Mrs.

1 Clinton's best friends.

2 Q As far as you are aware, did Mrs. Clinton
3 and Ms. Thomases' friendship continue throughout the
4 first six months of the Clinton Administration?

5 A As far as I know, yes.

6 Q Okay. You testified yesterday that at
7 some point you learned that Mr. Foster and Susan
8 Thomases spoke about the travel office; is that
9 right?

10 A That's right.

11 Q When did you learn about that conversation
12 between Mr. Foster and Ms. Thomases?

13 A Some time after his death.

14 Q Did you learn at that time when the
15 conversation had taken place between Mr. Foster and
16 Ms. Thomases?

17 A I think -- I'm subject -- Susan would
18 remember better than me, but I think it was some time
19 in the week before his death that they had talked
20 about the travel office, his concerns.

21 Q What do you remember learning from Ms.
22 Thomases about the conversation she had with Mr.

1 Foster in the week before Mr. Foster's death about
2 his concerns about the travel office?

3 A That he was concerned about it, concerned
4 about the upcoming congressional hearings; and, that
5 her impression was sort of like mine, that she was
6 giving him, "Vince, this isn't that big a deal. You
7 don't need to be so concerned about it," kind of the
8 same type of reaction that I was having. He seemed
9 to have it blown out of proportion.

10 Q Did Ms. Thomases tell you that Mr. Foster
11 had indicated to her that he was preparing any kind
12 of documents or that he possessed any documents on
13 the travel office in his office at the White House?

14 A Not that I'm aware of. I mean, one way or
15 the other, I would assume he did have some notes or
16 documents, because he worked on it.

17 Q Okay. But, Ms. Thomases didn't indicate
18 to you when you spoke with her that Mr. Foster has
19 told her about travel office documents he had in his
20 office; is that right?

21 A No.

22 COURT REPORTER: Was your answer no, sir?

1 THE DEPONENT: No. I'm sorry.

2 BY MR. KRAVITZ: (Continuing)

3 Q And, what you meant by -- my question was
4 unartful. Let me rephrase it just so the record is
5 clear.

6 When you spoke with Ms. Thomases about her
7 conversation with Mr. Foster in the week before Mr.
8 Foster's death, did Ms. Thomases say anything about
9 Mr. Foster having indicated to her that he had travel
10 office documents in his office?

11 A No. I don't think the issue of documents
12 came up.

13 Q Okay. I am going to apologize in advance
14 for jumping around, but I think that --

15 A No. And, by the way, my doctor's
16 appointment got moved. So, don't feel rushed.

17 Q Oh, okay. Well, we are still going to try
18 to keep to our word.

19 A Okay.

20 Q That makes me feel a little bit better. I
21 want to direct your attention now back to the night
22 of July 20, 1993 when you were actually at the

1 Foster's home.

2 You testified that at some point while you
3 were at the Foster's home that night you had some
4 conversation with one or more of the Park Police
5 officers present concerning the officers' interest in
6 interviewing Mrs. Foster; is that right?

7 A Right.

8 Q At any time that night, did you push a
9 Park Police officer out of the way or away from Mrs.
10 Foster?

11 A I do not believe I did. I don't -- I
12 certainly don't remember it.

13 And, I think if you knew me, me pushing
14 anybody would have -- somebody would have noticed.
15 But, if I did, I apologize.

16 But, I just don't remember.

17 Q You testified yesterday about some files
18 that I think you referred to as the Besty Wright
19 files.

20 A Yes.

21 Q And, those were files that were collected
22 during the 1992 presidential campaign?

1 A That's correct.

2 Q And, I believe you testified that after
3 the election in November 1992, the first place those
4 files went was your home; is that correct?

5 A From Betsy to me.

6 Q Now, your home is your home in Arkansas?

7 A Yes. Actually, they were delivered to my
8 office at the Rose firm.

9 Those files, and other files, then after I
10 left -- right before I left the firm were delivered
11 to my house. And, that's where they stayed for
12 awhile.

13 Q Do you have any way of knowing whether all
14 of the files that were delivered to the Rose law firm
15 following the election went to your house?

16 A Yes, I do know that that occurred.

17 Q How do you know that?

18 A Because all the files were delivered to my
19 office. And, that week-end, my son and I moved them
20 to my house.

21 Q Okay. I mean, how do you know that all of
22 the files that were delivered to your office went to

1 your house the next week-end as opposed to having
2 some of them having been removed?

3 A Because they were in my office. I mean,
4 they literally were delivered from Betsy to me, put
5 in my office. That week-end, my son and I took those
6 same boxes and moved them to my house.

7 Q Were the boxes sealed?

8 A No. The boxes were not sealed.

9 Q Was there any inventory of the boxes?

10 A There was a very rough index.

11 Q Did you look through any of the materials
12 in the boxes during the time period that they were in
13 your office --

14 A Not while --

15 Q -- at the Rose firm?

16 A Not while they were in my office, no.

17 Q But, it's your belief that no one went
18 into any of those files while they were at the Rose
19 law firm and removed anything?

20 A No. I don't believe they did.

21 Q You testified that at some point those
22 files, then, moved from your home in Little Rock to

1 Mr. Kendall's office here in Washington, D. C.

2 A They first went to my home here in
3 Washington.

4 Q Okay.

5 A And, then they went to Mr. Kendall's.
6 And, Mr. Kendall picked them up.

7 Q When did the Betsy Wright files move from
8 your home in Little Rock to your home here in
9 Washington?

10 A June of 1993.

11 Q And, what was the purpose in those files
12 being moved from your home in Little Rock to your
13 home in Washington, D. C.

14 A We were hoping to deliver them either to
15 an attorney for the Clintons or to put them in a
16 sealed storage facility up here.

17 Q How long did the Betsy Wright files stay
18 at your house in Washington, D. C. after they arrived
19 there in June of 1993?

20 A Until November of 1993.

21 Q To your knowledge, did all of the files
22 that were delivered first to your office at the Rose

1 law firm after the election and then to your home in
2 Little Rock a few days after that make it to your
3 home in Washington, D. C. in June 1993?

4 A Yes. I am confident that they all made it
5 here.

6 Q What's the basis of your confidence?

7 A Well, that the same boxes arrived. And,
8 at some point, I went through them briefly to make
9 sure that the -- that what was in the index was still
10 in the boxes.

11 Q Between the arrival of the Betsy Wright
12 files at your home in Washington, D. C. in June 1993
13 and Mr. Foster's death on July 20th, 1993, did anyone
14 remove any of the Betsy Wright files from your home
15 here in D. C.?

16 A I removed one file and delivered it to
17 Mrs. Clinton's office. But, it had nothing to do
18 with Whitewater, with this, what you are interested
19 in.

20 Q Okay.

21 A But, there was one file that I delivered
22 to Mrs. Clinton at her request.

1 MR. KRAVITZ: Can we go off the record for
2 a second?

3 (An off-the-record discussion ensued.)

4 BY MR. KRAVITZ: (Continuing)

5 Q What was the one file that you delivered
6 to Mrs. Clinton's office after June 1993 at the First
7 Lady's request?

8 A Okay. There was a file that was done on
9 kind of the genealogy of Mr. Clinton's natural
10 father. It had been done in the campaign.

11 And, there was an issue regarding whether
12 President Clinton had a half-brother. And, that was
13 the file I went and got out of the files and
14 delivered to Mrs. Clinton's office.

15 Q Okay. No files related to the Whitewater
16 Development Corporation were removed from the Betsy
17 Wright files between those files arrival at your home
18 in June 1993 and Mr. Foster's death?

19 A No.

20 Q And, the same answer for any files related
21 to Madison Guaranty or the McDougal's?

22 A That's correct. The only file that was

1 removed prior to Vince's death was that file.

2 Q Did anyone look at any of the Besty Wright
3 files when they were stored at your home after June
4 1993 and before Mr. Foster's death in July 1993?

5 A Other than myself, no. And, Mr. Foster
6 was there the night I got it, the file that we just
7 discussed.

8 Q Did Mr. Foster look at any of the files
9 that night?

10 A No, other than he helped me move a few
11 boxes to try to get that file.

12 Q And, you are referring to the one file
13 about genealogy?

14 A Right.

15 Q As far as you know, did Mr. Foster review
16 any Whitewater-related files at your home on that
17 night?

18 A No, he did not.

19 Q You testified yesterday that you knew that
20 Mr. Foster was working on Whitewater Development
21 Corporation tax returns for the Clintons.

22 A Yes.

1 Q Did you know that as of July 20, 1993?

2 A Yes.

3 Q Okay. I believe you also testified that
4 in light of your knowledge of Mr. Foster's work on
5 the tax returns you were not surprised to learn that
6 Mr. Foster had a Whitewater file in his office; is
7 that right?

8 A That's correct.

9 Q Did you actually know, as of July 20,
10 1993, that Mr. Foster had a Whitewater file in his
11 office?

12 A No. I did not know that. I don't know it
13 one way or the other, but I'm just not surprised.

14 Q Did -- and, so does it follow, then, that
15 before July 20, 1993 you never had any discussions
16 with any other White House officials about any
17 Whitewater files Mr. Foster may have had in his
18 office?

19 A Any other official, absolutely not. No.

20 Q Okay. And, that would include the
21 President and First Lady?

22 A That's correct.

1 Q And, in the days following Mr. Foster's
2 death, say July 20, 21, 22, did you have any
3 conversations with any White House officials,
4 including the President and the First Lady, about a
5 Whitewater file in Mr. Foster's office?

6 A No.

7 Q Mr. Johnson had a question that I will try
8 to ask. And, if I screw it up, just let me know.

9 You testified, I believe -- and tell me if
10 I'm mischaracterizing your testimony, because it's
11 certainly not intentional, but you testified that as
12 of July 20, 1993 you did not know that Mr. Foster had
13 a Whitewater file in his office.

14 A That's right. I didn't know. I would be
15 surprised that he didn't, but I didn't know that he
16 did.

17 Q Okay. And, I believe you also testified
18 that as of that time you had had no conversations
19 with any White House officials about any Whitewater
20 file that may have been in Mr. Foster's office at the
21 time of his death.

22 A Right, other than what we talked about

1 about me talking to Vince about it.

2 Q Okay. That was our question.

3 A Okay.

4 Q And, just so the record is clear, why

5 don't you tell us again about what you --

6 A We never had a conversation about a file.

7 We had a conversation that Vince was working on their

8 tax returns. Okay.

9 Q Okay.

10 A I never knew whether he had a file or not.

11 But, I certainly had conversations with him regarding

12 the fact that he had been working on Whitewater tax

13 returns.

14 Q Okay. And, in the course of those

15 conversations, there was no discussion about what

16 type of documents or how many documents related to

17 Whitewater Mr. Foster kept in his office; is that

18 right?

19 A That's correct.

20 Q Based on your familiarity with Mr.

21 Foster's work habits and the way he kept files over

22 the years that you and he were colleagues and based

1 on your understanding of the type of work that he was

2 doing for the Clintons relating to the Whitewater tax

3 returns, do you have any sense of what Mr. Foster's

4 Whitewater file might have looked like or what you

5 expect it would have looked like in the spring and

6 early summer of 1993?

7 A No, I wouldn't. I mean, he would probably

8 have some notes. He wrote notes.

9 He would have a legal pad that he would

10 take notes on. But, I don't know if that was just

11 limited to Whitewater.

12 You know, he wouldn't necessarily have a

13 separate Whitewater pad and a separate this pad or

14 whatever. I just don't know how he would have kept

15 that.

16 Q But, do you have a sense of, say, the

17 quantity of documents that he would try to bring

18 together or collect for that type of a project?

19 A No. I think he would be relying heavily

20 on an accountant, it would seem like to me.

21 He wouldn't be doing the tax work himself,

22 so to speak.

1 Q When you spoke with Mr. Foster about the
2 fact that he was working on Whitewater tax returns
3 for the Clintons, did Mr. Foster tell you that he was
4 relying heavily on the work of accountants?

5 A No. I would just assume that.

6 Q Based on your familiarity with the way Mr.
7 Foster worked?

8 A And also the fact that he was not a tax
9 lawyer.

10 Q You testified that during the time period
11 before Mr. Foster's death Mr. Foster expressed to you
12 some concerns about the travel office matter. And, I
13 think you said that Mr. Foster told you specifically
14 that he was concerned about upcoming congressional
15 hearings that he anticipated at the time; is that
16 right?

17 A Yes. He was -- he was.

18 Q Did Mr. Foster ever discuss with you any
19 written materials relating to the travel office
20 matter that he was -- that he kept in his office?

21 A No, he did not.

22 Q Did Mr. Foster ever discuss with you any

1 written materials related to the travel office that
2 he carried in his briefcase?

3 A No, he did not.

4 Q To your knowledge, did Mr. Foster ever
5 discuss with anyone any written materials related to
6 the travel office matter that he had in his
7 possession, either in his office or in his briefcase
8 or anywhere else?

9 A No. The only thing I am aware of is that
10 he had talked with several lawyers about them
11 representing the White House.

12 And, there was also an issue of whether
13 the White House counsel itself should have its own
14 lawyers. And, he talked to those lawyers.

15 And, in the context of one of those
16 conversations, I know he sent some documents to one
17 of the lawyers. Now, what those documents were, I
18 don't know.

19 And, I found that out after the fact.

20 Q To your knowledge, how widely known within
21 the White House and other high level Administration
22 officials were Mr. Foster's concerns about the travel

1 office matter?

2 A I don't know that they went above the
3 level of the Chief of Staff. But, I know that
4 several people that I'm close to were aware that
5 Vince was depressed over what had happened with
6 regard to the travel office, the publicity he had
7 personally gotten and the criticisms that Bill
8 Kennedy had gotten as a result of the travel office.

9 Q Now, you testified that you spoke with the
10 President or referred briefly to Mr. Foster's travel
11 office-related concerns when you spoke with the
12 President on the night before Mr. Foster's death; is
13 that right?

14 A I think I said I may have. But, I don't --
15 I can't remember specifically I did.

16 I am aware the President called him that
17 night. And, I was with the President that night.

18 So, it's likely that we may have discussed
19 that he was -- had been depressed. But, I also would
20 have told him we had a great week-end the week-end
21 before.

22 Q Did you ever discuss with the President

1 Mr. Foster's concerns about the travel office matter
2 before this conversation that you -- in which you may
3 have discussed those problems?

4 A No, I would not have.

5 Q And, what about the First Lady. At any
6 time before Mr. Foster's death, did you discuss with
7 her Mr. Foster's concerns about the travel office
8 matter?

9 A I know I did not.

10 Q Before Mr. Foster's death, did you ever
11 discuss with Maggie Williams Mr. Foster's concerns
12 about the travel office matter?

13 A No.

14 Q And, what about Susan Thomases before Mr.
15 Foster's death?

16 A Not before his death, no.

17 Q Only during this conversation you've
18 testified about earlier this morning in which --

19 A That was after his death.

20 Q Right.

21 A She had had a conversation before his
22 death with Vince --

1 Q Right.

2 A -- that I learned about after his death.

3 Q Okay. And, that's -- and it was only
4 during that conversation that you had with Ms.
5 Thomases after Mr. Foster's death --

6 A Right.

7 Q -- that you learned that Mr. Foster and
8 Ms. Thomases spoke about the travel office obviously
9 before Mr. Foster's death?

10 A Right.

11 Q Has anyone at any time ever expressed
12 concerns to you about any documents or files that may
13 have been in Mr. Foster's office at the time of his
14 death relating to the travel office matter that were
15 viewed as embarrassing in some way to the
16 Administration?

17 A No.

18 Q You testified that at some point in the
19 late 1980s you were aware that a lawyer at the Rose
20 law firm named Allen Bird was assisting Mrs. Clinton
21 in assembling documents related to the Whitewater
22 Development Corporation; is that right?

1 A That's correct.

2 Q To your knowledge, was Mr. Foster involved
3 in that project at all?

4 A I don't believe he was. It was a
5 bankruptcy-related matter.

6 And, Mr. Bird is a bankruptcy lawyer. So,
7 I don't believe Vince was.

8 Q To your knowledge, did Mr. Foster ever
9 take possession of any of the documents that were
10 collected by Mrs. Clinton and/or Mr. Bird during that
11 project in the late 1980s?

12 A With regard to Whitewater? No, I don't
13 know. I don't believe he did.

14 Q Okay. Yesterday, Mr. Johnson asked you
15 whether, in light of the fact that Mr. Foster was
16 generally a very neat person, you thought it was out
17 of character for him to -- or would have been out of
18 character for him to keep a torn up note in his
19 briefcase.

20 And, you testified that some time before
21 Mr. Foster's death he expressed to you some distrust
22 of telephones and possibly other things that were

1 present in the White House. Can you tell us a little
2 bit more about those conversations you had with Mr.
3 Foster?

4 A I -- you know, there toward the end -- and
5 with hindsight you can look at it differently. But,
6 toward the end, we would have conversations -- we
7 would talk almost daily on the phone about business
8 and sort of just check in on each other.

9 And, toward the end, he would make remarks
10 like, "I would like to talk to you, but I don't want
11 to talk to you over the phone," or, you know, "I'm
12 not sure I can talk to you over the phone about this,
13 but we will talk next time we get together in
14 person," things that at the time you don't think much
15 about and you think a lot about afterwards. And,
16 that's what I'm talking about.

17 Q Were there other aspects or parts of Mr.
18 Foster's daily life that he all of a sudden started
19 stating concerns or distrust of?

20 A No. I mean -- let me think. He was --
21 you know, he was upset about things that most people
22 would not be upset about under normal circumstances,

1 which I think was evidence of a disease that we just
2 didn't see.

3 He was upset about, you know, the Wall
4 Street Journal, the question mark and the paper and
5 the editorials. And, after I had gone through four
6 or five, you know, I had gotten to the point where I
7 was joking about them and was trying to get him not
8 to be upset about them.

9 Just something seemed out of perspective,
10 with hindsight looking at it, that we didn't see.

11 Q Did Mr. Foster ever state to you that he
12 had a distrust of putting things in the trash?

13 A No. He never said that.

14 Q You just --

15 A This is just speculation.

16 Q You just view that as possibly being
17 consistent with his --

18 A Right.

19 Q -- new found distrust of the telephones?

20 A Right.

21 Q How long a period of time before Mr.
22 Foster's death was he expressing a distrust of the

1 phones?

2 A The last few weeks. I would say, you
3 know, beginning mid to late June.

4 Q I want to direct your attention again back
5 to the night before Mr. Foster's death, July 19,
6 1993, when you were with the President and the
7 President invited Mr. Foster over. And, I recognize
8 that you don't recall whether or not you talked to
9 the President about Mr. Foster's travel office
10 concerns.

11 But, let me ask you just a more specific
12 question. Do you have any recollection of speaking
13 with the President that night, July 19, 1993, about
14 Mr. Foster's concerns about upcoming congressional
15 hearings into the travel office matter?

16 A I don't. I had talked to Mac McClarty
17 that morning about the fact that I thought Vince was
18 doing a lot better.

19 And, so --

20 Q That morning, meaning the 19th?

21 A The 19th. So, again, I -- my suspicion is
22 that it would have been more of a positive comment

1 than a negative comment.

2 It might have been, "Vince has been down
3 about the travel office, but we had a great week-
4 end," and I would have described the week-end and
5 said, "He's doing better."

6 Q And, just so the record is clear, what you
7 are referring to now is the conversation that you
8 would have had with the President on the night of the
9 19th?

10 A Right.

11 Q You testified yesterday about some things
12 that your wife and Marsha Scott have said to you in
13 the past few months about discussions that they say
14 they remember you having had on the night of July 20
15 with either Mr. McClarty or Mr. Watkins about sealing
16 or locking Mr. Foster's office; is that right?

17 A That's correct.

18 Q And, is it -- am I correct that it's your
19 testimony that even after having had these
20 discussions with your wife and Marsha Scott over the
21 past few months, at this time you still have no
22 independent recollection yourself of having discussed

1 with Mr. McClarty or Mr. Watkins on July 20, 1993
2 anything about sealing Mr. Foster's office?

3 A That's correct. And, it's -- the fact
4 that I don't is consistent with my memory that I
5 couldn't sleep that night because I hadn't gotten --
6 made sure that was done. And, that's why I called
7 Bill Burton the next morning.

8 Q So, it's your belief actually that your
9 wife and Ms. Scott are incorrect in their memory?

10 A I -- I mean, if you had been there and
11 realized how many things were going on, it is
12 certainly possible that I did. But, I don't have any
13 memory of it myself.

14 Q Okay. And, what you do remember is that
15 one of the things that made you -- or made it
16 difficult for you to sleep that night was that you
17 felt you had not asked anyone about sealing the
18 office?

19 A Right. That's why I called Bill the first
20 thing in the morning.

21 Q You testified yesterday that you and Mrs.
22 Foster looked for a note at Mrs. Foster's home on the

1 night of July 20.

2 A That's right.

3 Q Where did you look?

4 A We looked in the bedroom. We looked -- if
5 my recollection is right, there was a desk outside
6 the bedroom.

7 We looked in the spare bedroom and then
8 looked downstairs in the -- you know, the various
9 pieces of furniture to see if there was a note
10 anywhere.

11 Q As far as you aware, did any of the Park
12 Police officers who were at the Foster home that
13 night make any requests to look through the house for
14 a suicide note?

15 A For some reason, I think they did. But, I
16 -- they may have asked Lisa if she had looked for any
17 kind of a note or if there was any note.

18 But, I don't know whether they did or not.
19 And, I don't have any memory of that.

20 Q Okay. You don't remember any Park Police
21 officer asking you whether they could look around the
22 house?

1 A No. But, they were there.

2 MR. KRAVITZ: I think that may be all I
3 have. That's all I have.

4 Thank you very much.

5 THE DEPONENT: Okay. Sure.

6 MR. JOHNSON: Mr. Hubbell, I have just
7 three or four very quick follow-up questions based on
8 what Mr. Kravitz asked you.

9 THE DEPONENT: Sure.

10 REDIRECT EXAMINATION

11 BY MR. JOHNSON:

12 Q On the evening of the 20th, do you
13 remember
14 -- in the early morning hours of the 21st, do you
15 remember being sleepless and it occurring to you in
16 the middle of the night some time that you needed to
17 tell somebody to seal Mr. Foster's office; is that
18 correct?

19 A That's correct.

20 Q Okay. I take it, it's possible, is it
21 not, that you had mentioned that earlier in the
22 evening but in your sleeplessness you simply didn't

170

1 remember that?

2 A Absolutely.

3 Q Okay. You also described your familiarity
4 with Mrs. Clinton's friendship with Susan Thomases.

5 To the best of your knowledge, did Ms.
6 Thomases ever act as an attorney for Mrs. Clinton?

7 A I really don't know the answer to that
8 question. She was an attorney, and I just really
9 don't know.

10 Q Okay. Did you read this morning's
11 Washington Post?

12 A I did.

13 Q And, The Washington Post reported this
14 morning, apparently on the basis of information
15 provided by the White House, the content of some of
16 the documents that may have been in Mr. Foster's
17 office at the time of his death. And, you have
18 earlier testified that you were aware that he was
19 working on tax returns.

20 Did Mr. Foster ever express to you that
21 the preparation of the Whitewater tax returns was a
22 can of worms or anything to that effect?

1 A No, he did not.

2 Q Did he ever express to you that he or
3 others were having difficulty reconciling the tax
4 returns with the public statements of the Clintons or
5 the Clinton campaign concerning Whitewater?

6 A No. I thought about that. I figured
7 ya'll would ask me this morning.

8 And, I'm trying to remember it, because I
9 don't know when those tax returns were publicly
10 disclosed, when I would have known or whether Vince
11 had mentioned to me that they were taking the most
12 conservative position with regard to the loss. I
13 don't remember whether if the return was filed prior
14 to his death.

15 It is possible that we had a discussion
16 about it and that he might have even asked me, you
17 know, what would be my opinion, which -- should he
18 take the most conservative. And, basically, with
19 regard to the Clintons, I think his position was
20 right -- if you don't have the documentation, don't
21 take the deduction.

22 But, aware of a debate, no.

1 Q I'm sorry. I didn't understand the last
2 part.

3 A But, where -- based on that article that
4 there was an ongoing discussion about it or a debate
5 about it, no, I was not aware of it.

6 Q Okay. And, while you have just answered
7 that you may have had the kind of conversation that
8 you just described with Mr. Foster, are you actually
9 recalling that or are you sort of speculating that in
10 the context it wouldn't surprise you that that had
11 occurred?

12 A It would not surprise me. But, I don't
13 have any recollection of it.

14 And, it would take, you know, going back
15 and seeing when that tax return was filed and what
16 the disclosures -- that might help trigger it. But,
17 I don't have any independent memory right now of it.

18 Q Okay. Now, you also told Mr. Kravitz -- I
19 think I have these dates right, but tell me if I
20 mistranscribed them -- that the Betsy Wright files
21 were moved from your home in Little Rock to your home
22 in Washington in June of 1993; is that correct?

1 A That's correct.

2 Q Okay. And, what was the purpose in
3 bringing them to Washington from Little Rock?

4 A The decision had been made to bring them
5 to Washington and then hopefully we were going to get
6 them in the hands of an attorney; or, if we couldn't
7 do that, at least get them in a place where they were
8 secure.

9 Q Why -- why -- what was your impression
10 about why the Clintons or anyone else wanted to get
11 those documents in the hands of an attorney?

12 A One of the reasons that they were in my
13 possession to begin with was one of the, at least,
14 arguments that we were, at least, prepared to make
15 during the campaign and during the transition was
16 that those files were prepared under the direction of
17 an attorney and, therefore, had -- there was an
18 argument that there was an attorney/client privilege
19 if there had been a lawsuit and somebody had wanted
20 one of those files. So, we wanted to continue that
21 chain into the hands of another attorney.

22 Q And, if I understand this correctly, when

1 a lawsuit is filed, then the plaintiff in that
2 lawsuit has access to certain compulsory processes to
3 try and compel the production of documents?

4 A Right.

5 Q And, your impression was that the Clintons
6 would be better able to resist the compulsory
7 production of those documents if they were maintained
8 in the possession of an attorney?

9 A If they desired to do so. At least, you
10 hadn't waived it by putting it in the hands of some
11 third party.

12 MR. JOHNSON: Thank you, Mr. Hubbell. I
13 don't have any further questions.

14 Notwithstanding the newspaper reports, we
15 remain very interested in the confidentiality of
16 these proceedings. And, we would be grateful if you
17 wouldn't discuss it.

18 THE DEPONENT: I don't intend to talk to
19 anybody about it.

20 MR. JOHNSON: Thank you.

21 MR. KRAVITZ: Thanks a lot.

22 (Whereupon, the deposition is concluded at

1 10:14 a.m., Friday, July 14, 1995.)

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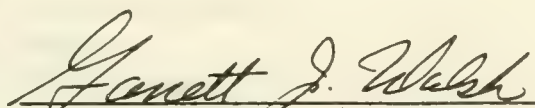
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WEBSTER L. HUBBELL

CERTIFICATE OF NOTARY PUBLIC & REPORTER

176

I, GARRETT J. WALSH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
Commonwealth of Virginia

My Commission Expires JANUARY 14, 1997

**DEPOSITION OF LOUIS GALE HUPP
IN RE: S. RES. 120**

FRIDAY, JULY 14, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
*Washington, DC.***

Deposition of LOUIS GALE HUPP, called for examination pursuant to notice of deposition, at 9:55 a.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

**JAMES B. COMEY, Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.**

**ANDREA M. SIMONTON, Esq.
Deputy General Counsel
Federal Bureau of Investigation
Tenth Street & Pennsylvania Avenue, NW
Washington, DC 20535
On behalf of the Deponent.**

APPEARANCES

CHARLES J. SGRO, Esq.
 Special Assistant to the Attorney General
 U.S. Department of Justice
 Tenth Street & Constitution Avenue, NW
 Room 4115
 Washington, DC 20530

BRETT KAVANAUGH, Esq.
 Office of Independent Counsel Kenneth Starr
 1001 Pennsylvania Avenue, NW
 Washington, DC 20004

ALSO PRESENT: NGUYEN-HONG HOANG
TIMOTHY P. MITCHELL

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Louis Gale Hupp | |
| by Mr. Ben-Veniste | 4 |
| by Mr. Comey | 54 |
| Errata | 4351 |

EXHIBITS

| Louis Gale Hupp | IDENTIFIED |
|----------------------|------------|
| DEPOSITION NUMBER | |
| Hupp Exhibit 1 | 27, 4352 |

1 PROCEEDINGS

2 Whereupon,

3 LOUIS GALE HUPP

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. BEN-VENISTE:

8 Q Will you state and spell your full name?

9 A My name is Louis Gale Hupp. Last name is
10 spelled H-u-p-p.11 Q Mr. Hupp, my name is Richard Ben-Veniste.
12 I am minority counsel to the Special Committee of the
13 Senate investigating Whitewater and other matters,
14 and you have been asked to testify here this morning,
15 to give evidence with respect to aspects of the first
16 area of our hearings, which is the handling of
17 Vincent Foster's papers subsequent to his death on
18 July 20, 1993. You are represented here by counsel?

19 A Yes.

20 Q Would counsel please identify herself for
21 the record?

22 MS. SIMONTON: Andrea Simonton. I'm deputy

1 general counsel of the FBI and I'm here on behalf of
2 the FBI.

3 MR. SGRO: I'm Charles Sgro, special
4 assistant to the Deputy Attorney General, on behalf
5 of the Department of Justice.

6 MR. BEN-VENISTE: And we have a special
7 guest this morning, as far as -- unprecedented to
8 this point in connection with our inquiry, Mr. Brett
9 Kavanaugh, and Mr. Kavanaugh, would you spell your
10 name for the record and provide us with an
11 explanation of your appearance here today.

12 MR. KAVANAUGH: First name is Brett,
13 B-r-e-t-t. Last name is Kavanaugh,
14 K-a-v-a-n-a-u-g-h. I am associate Independent
15 Counsel in the Office of Independent Counsel of
16 Kenneth Starr, and I am here on behalf of the Office
17 of Independent Counsel to ensure that the questioning
18 concerns only activities in July and August of 1993
19 and does not go beyond that.

20 MR. BEN-VENISTE: Frankly, if the witness
21 has no objection to your appearance here today, I
22 have no objection to it. I don't think that this

1 would constitute any agreement or disagreement with
2 the notion that you, as a representative of the
3 Independent Counsel's office, have any right to be
4 here before us in the deposition process, which is a
5 confidential process. I would request that, at your
6 earliest convenience today, you execute a
7 confidentiality form with respect to the matters that
8 occur here today so that we are assured that there
9 will be no dissemination of this information beyond
10 conversations with Judge Starr or other officials of
11 the Independent Counsel's office.

12 Is that acceptable to you?

13 MR. KAVANAUGH: That's fine with me.

14 MR. BEN-VENISTE: Mr. Comey, do you have
15 any objection to Mr. Kavanaugh's appearance here
16 today?

17 MR. COMEY: No, I don't think so.

18 MR. BEN-VENISTE: Rather than get a ruling
19 from Senators D'Amato and Sarbanes about your
20 presence here, and in view of the lateness of getting
21 started this morning, and our other schedule today,
22 it would be my recommendation, under these very

1 limited circumstances, to Senator Sarbanes, if he
2 were to ask for one, that you be permitted to stay.
3 So with that, let me begin with the questioning.

4 BY MR. BEN-VENISTE:

5 Q Mr. Hupp, how are you employed?

6 A I'm employed as a fingerprint specialist
7 with the Federal Bureau of Investigation, laboratory
8 division, here in Washington, D.C.

9 Q And as such, are you a special agent of the
10 FBI?

11 A No, I'm not.

12 Q And how long have you worked for the FBI?

13 A A little more than 30 years.

14 Q And would you give us a summary of your
15 educational background and experience in connection
16 with fingerprint analysis?

17 A I entered on duty in 1965 after graduating
18 from high school in New Matamoras, Ohio, and I was
19 assigned to the 10-fingerprint files as a student
20 fingerprint classifier. In that capacity, I learned
21 to classify fingerprints which enabled me to locate
22 them in our files, also learned how to file the

1 prints and how to retrieve the prints from file.
2 This required approximately six months of classroom
3 training and then approximately six months of
4 extensive close supervision through a supervisor
5 before we were really -- I guess what we would call a
6 benefit to the Bureau. Then I progressed through
7 various schools in services with the Bureau to reach
8 the position of assistant supervisor in the 10
9 fingerprint files.

10 In 1975 I took a competitive test and was
11 afforded an opportunity to go into the latent
12 fingerprint sections where I'm employed now. At that
13 time we went through extensive training through
14 senior examiners of the FBI and a lot of on-the-job
15 training also. There again, we attend various
16 in-services for new procedures and the like. And
17 that's pretty much where I am today.

18 Q Is the Washington office the main
19 fingerprint center for the FBI?

20 A It's the only center.

21 Q And about how many fingerprint specialists
22 are employed by the FBI, if you know?

1 A We have about 79 now on file doing the
2 latent print work.

3 Q Do you have any experience in teaching?

4 A Yes, I do.

5 Q Could you explain that for the record,
6 please.

7 A Over the course of about the last 15 years,
8 I've taught probably 60, 65, what we call fingerprint
9 schools throughout the United States. I've also
10 taught in Quantico, Virginia, instructed the National
11 Academy as well as other police officers. I have
12 lectured and instructed in Athens, Greece, as well as
13 Mexico City, and I'm presently training our field
14 offices in evidence recovery and processing for
15 fingerprints.

16 Q And who is your immediate supervisor?

17 A My immediate supervisor is Leroy Walton.

18 Q And what is his title?

19 A Fingerprint -- supervisory fingerprint
20 specialist.

21 Q Up through the chain in the fingerprint
22 section, who would Mr. Walton report to?

10

1 A He would report to Mr. Eugene Mulhollan.

2 Q How do you spell that?

3 A M-u-l-h-o-l-l-a-n.

4 Q And what is his title?

5 A He is a supervisory fingerprint specialist
6 in the fingerprint section.

7 Q And who does Mr. Mulhollan report to?

8 A He reports to Special Agent Danny
9 Greathouse.

10 Q And what is Mr. Greathouse's title?

11 A He is a section chief of the latent
12 fingerprint section.

13 Q And who does Mr. Greathouse report to?

14 A Mr. Milt Alherich.

15 Q What is Mr. Alherich's title?

16 A He is the assistant director in charge of
17 the laboratory division.

18 Q Is that the top of the food chain as far as
19 the fingerprints?

20 A That's as far as it goes, yes.

21 Q Thank you. Did there come a time, sir,
22 when you were asked to analyze a number of scraps of

1 yellow paper for the purposes of determining whether
2 a latent fingerprint was present on those scraps of
3 paper?

4 A Yes.

5 Q And approximately when was that?

6 A It was late in the afternoon on the day of
7 July 30, 1993.

8 Q I see you are referring to notes, and that
9 is perfectly acceptable for you to refresh your
10 recollection to the extent that you're able to do so
11 from your written reports and notes, sir.

12 What were the circumstances under which you
13 were requested to do so?

14 A They were brought to me by another
15 laboratory personnel, and I was just instructed to
16 attempt to develop latent prints, and I was given a
17 list of names to compare.

18 Q Now, can you explain what a latent
19 fingerprint is, please?

20 A The undersides of the fingers, as well as
21 the palms of the hands, are covered with raised
22 portions of skin, which we call friction ridges.

1 These friction ridges are lined with small openings,
2 sweat pores, and they are usually moist or damp. And
3 when your finger comes in contact with a surface such
4 as the tabletop here, these outlines or designs are
5 transferred to that. And they require some form of
6 processing, either through the use of fingerprint
7 powders or chemicals, in order to make them visible
8 to the naked eye, and they're usually a mere chance
9 impression, in that they weren't meant to be left.

10 Q And what are the procedures that you
11 employed with respect to the material provided to
12 you -- was it by Special Agent Scott Salter on July
13 30?

14 A No, I believe Mr. Salter brought that in
15 and provided it to the laboratory personnel and then
16 the laboratory personnel that did the initial
17 handwriting examination was the one that brought it
18 to me.

19 Q And in what form was the material brought
20 to you?

21 A When it was brought to me, it had been
22 reassembled or it had been pieced together back. It

1 wasn't 28 pieces -- it was 28 pieces but they were
2 assembled as best they could so they could determine
3 the writings or the statement that was on it.

4 Q Was it in an envelope or enclosure of some
5 sort?

6 A It was in a -- they have a piece of plastic
7 that has a light sticky substance on it. They place
8 it on there, and they place the piece on top of it so
9 it didn't move, and it was easily removed.

10 Q What were you told about this paper when it
11 was given to you?

12 A I really wasn't given any details, other
13 than what it involved, where it came from.

14 Q So to the best of your recollection, tell
15 us what you were told and by whom.

16 A I was told at the time, as best I
17 recollect, where it had came from, what it was -- it
18 was an apparent suicide note.

19 Q Instead of using conclusory language, such
20 as where it came from, to the best of your
21 recollection, would you relate the conversation.

22 A The gentleman that brought it to me merely

1 stated that this was a note in regards to Mr. Foster,
2 and that they wanted as urgent a reply as possible
3 and could we take care of it.

4 Q Were you provided any information -- did
5 you know who Mr. Foster was at that time?

6 A I had heard the name, and had read in the
7 papers, but other than that, no.

8 Q Were you provided with any information
9 about who might have handled this material?

10 A I was merely given a list of names at the
11 time and requested to compare any fingerprints or
12 prints that I developed on the note with this list of
13 names, and it was not -- there was no mention of they
14 may have handled it. It was just a list of names
15 which were provided to me.

16 Q And by the list of names provided to you,
17 you took it to mean that these were people who might
18 have had some contact with this material, physical
19 contact?

20 A I guess that would be a fair assessment,
21 yes.

22 Q Can you identify for the record who those

1 individuals were?

2 A The individuals that were named were, of
3 course, Mr. Foster, Stephen R. Neuwirth, Bernard
4 William Nussbaum, Charles William Burton, and
5 Clifford Sloan.

6 Q The record should reflect that the witness
7 is reading from what has previously been designated
8 as FBI 81, provided to us by the Department of
9 Justice.

10 Now, at the top of that document it says
11 named suspects. Did that mean to you that these
12 persons were individuals who it was believed might
13 have handled the material?

14 A The mere term "named suspects," they
15 weren't given to me as an elimination type. They
16 didn't say they were elimination. They said these
17 people should be compared and that's a statement we
18 put on our report.

19 Q It's not that they're suspected of doing
20 anything wrong?

21 A No.

22 Q So the "suspect" means simply an idea for

1 you to get started in checking what prints you may
2 have on file with respect to those named individuals
3 as against anything you might find on the material
4 which you were about to examine?

5 A That is correct.

6 Q And at the FBI lab, do you give a
7 designation to a questioned document?

8 A Yes.

9 Q And in this case, was the questioned
10 document as assembled given one identifying number?

11 A Yes, it was.

12 Q And what was that?

13 A Q1.

14 Q As in questioned document number 1?

15 A Questioned document number 1, that's
16 correct.

17 Q With respect to the material that was
18 forwarded to you, was there some paperwork involved?

19 A Yes, there was.

20 Q And at the top of what has been designated
21 FBI 80, is this the document that would be prepared
22 normally for you to start your work to invoice in the

1 material that you would be examining?

2 A Yes.

3 Q It says at the top recorded 8/2/93,
4 received 7/30/93. What do those two dates mean?

5 A The fact that I received it on the evening
6 of the 30th after normal business had ceased. At
7 that time I was working the late shift, as we call
8 it, until about 10:30. I received it late.
9 Therefore, there was nobody there to record it. So I
10 went ahead and made my notes -- or went ahead and did
11 my examination and had it reported on Monday.

12 Q Who was responsible for preparing Exhibit
13 FBI 80?

14 A The initial typing is done by -- we have
15 people assigned that we give them the paperwork, and
16 they generate what we call note sheets or work
17 sheets. It could be any one of a number of people.

18 Q So you don't know exactly who it is. But
19 who provides the information to the people who type
20 it up?

21 A This is the information that's provided by
22 the investigator.

1 Q And who would that be?

2 A At this time, I don't know who the
3 investigator was. In regards to the note, I see a
4 Scott Salter, so I assume he was the one who provided
5 the initial paperwork.

6 Q But it is not a report, referring to FBI
7 80, that is signed by anyone?

8 A No.

9 Q And there's a handwritten notation on the
10 bottom left-hand corner that has the date 7/30/93?

11 A That is correct.

12 Q "Laser exam, no lats" or lats?

13 A Lats.

14 Q What does that mean?

15 A Those were notes that were placed by me,
16 explaining the actions that I took on that given day.

17 Q Does that mean that you wrote this on July
18 30?

19 A No. There were no notes placed until
20 actually August 2nd when I received the note sheet.

21 Q So you recorded as the date that you
22 performed your initial work on the questioned

1 document, reflected as 7/30/93 on a document which
2 was prepared on August 2, 1993?

3 A That is correct.

4 Q What is a laser exam?

5 A That is an examination through an argon ion
6 laser. We actually put the item under a diffused
7 beam and in some instances, certain properties as
8 perspiration will fluoresce on their own under the
9 laser. That's the purpose of this examination. In
10 this instance, nothing transpired.

11 Q Nothing fluoresced?

12 A Nothing fluoresced.

13 Q Under that process, it says "processed
14 DFO"?

15 A It means it was processed with a chemical
16 called -- and I'll -- so we get it right, I did copy
17 it down 1,8-diazofluorene-9-one.

18 Q I have the expectation that you may be
19 asked to spell that, so if you would do so.

20 A Actually to write it out it is 1,8 -- the
21 spelling is d-i-a-z-o-f-l-u-o-r-e-n-e-numerical 9-one
22 spelled out.

20

1 Q That's a chemical identification of the
2 material that is applied to the paper?

3 A That is correct.

4 Q Then it says "Q1 to photo"?

5 A It was at this point after processing with
6 it and reviewing it, I determined it was a
7 fingerprint that needed to be photographed, and I
8 did, in fact, have that fingerprint photographed
9 before I proceeded to the next step of the
10 processing.

11 Q So the argon ion laser test, if I
12 understand your testimony, did not produce any
13 results, but the chemical testing did, in fact,
14 produce a latent fingerprint or a latent print?

15 A That is correct.

16 Q As it turned out, it was not a fingerprint;
17 is that correct?

18 A That is correct.

19 Q What was it?

20 A It was a partial palm print.

21 Q Let me go back for a moment and explore
22 with you something that you raised when I asked you

1 to describe what fingerprints are. You indicated
2 that fingerprints are made by ridges which are
3 usually moist?

4 A That is correct.

5 Q Does that mean that every time an
6 individual touches an object, he or she will leave a
7 fingerprint?

8 A Not necessarily.

9 Q What are the circumstances under which an
10 individual might not leave a fingerprint?

11 A First off, many people have very dry skin.
12 I personally have that, and I don't leave very good
13 latent prints.

14 Q So you're hard to work on, your own stuff.
15 Is that what you're saying?

16 A That's true.

17 Q So if we came into this room later after
18 you had left it and with the exception possibly of
19 this glass top table, other things that you touched
20 might very well not reveal any identifiable print of
21 yours?

22 A That is correct.

1 Q So dry skin is one?

2 A Dry skin is one. Somebody who has recently
3 washed their hands and dried their hands. Anyway you
4 can remove the perspiration or the substance on the
5 fingers, then that would be a chance you probably
6 wouldn't leave very good prints.

7 Q And how long would it take, if you can
8 answer that question, for the body processes to
9 establish themselves to the point after washing one's
10 hands, where fingerprints would be left again?

11 A I don't think I could really establish a
12 time frame there. It would vary from person to
13 person.

14 Q And that would again, vary on the basis of
15 dry skin, moisture in the skin?

16 A That's right.

17 Q Would the conditions of the location in
18 which the object was handled play any role in whether
19 fingerprints are more likely or less likely to be
20 latent fingerprints or more or less likely to be
21 revealed?

22 A Well, I think basing the fact that the

1 latent prints are generally left in perspiration,
2 what we're dealing with, or sebaceous glands,
3 sebaceous material, temperature could have an effect
4 on it, but then you're getting into a degree that
5 nobody can say what degree somebody was sweating and
6 what degree would somebody else not sweat.

7 Q So the room temperature would be another
8 variable?

9 A It could be a variable, yes.

10 Q And what about the level of humidity?

11 A There again, it's based on perspiration, so
12 the higher humidity, it's possible it would have an
13 effect.

14 Q These would all be variables but probably
15 the most important one being the personal
16 characteristics of the individual himself or
17 herself. Is that fair?

18 A That's right.

19 Q Now, what about the material which an
20 individual touches. Is that a variable as well in
21 terms of whether a latent print can be discovered? I
22 used the example of this glass top table. Would that

1 be a relatively good surface for the purpose of
2 developing a latent fingerprint?

3 A Well, it would be a good surface to develop
4 a print in that you can see it right away. It's
5 also, by the same fact that it's a good surface, by
6 going like that, you can also remove them. It's what
7 we call a fragile surface.

8 Q When you say "by going like that" --

9 A Moving or brushing it. Whereas, if you
10 understand the types of evidence, you either have
11 evidence that's nonporous such as this glass top and
12 the latent print lays on it or you have porous where
13 the -- paper falls in the porous category -- where
14 it's absorbed into it. They're a little easier to
15 maintain. They're harder to destroy because you
16 cannot wipe them away. They're actually in the paper
17 fibers themselves.

18 Q When you say you cannot wipe them away, and
19 you demonstrated that by brushing the back of your
20 hand across the document in front of you, what about
21 if you rubbed really hard?

22 A It wouldn't make any difference. The only

1 problem that you might have is you might leave
2 another print on top of it with the back of your
3 hand.

4 Q Suppose you used some other object, like a
5 scouring pad?

6 A No, would have no effect whatsoever. It's
7 actually absorbed into the paper and it's embedded in
8 the paper.

9 Q So there's no way you could get it out.
10 What if you used an eraser or something?

11 A No. It's absorbed into the fibers
12 themselves, short of removing those fibers.

13 Q What you're saying is the extent of your
14 technology and capability is such that no one could
15 remove -- successfully remove fingerprints from a
16 piece of paper once it was put on that paper, absent
17 actually destroying the paper itself?

18 A That would be correct.

19 Q And if you were to destroy the paper, I
20 take it in this case, you would be obliged to destroy
21 the writing on it as well?

22 A Yes.

1 Q Now, you mentioned that you photographed
2 the document that you were working on or the material
3 that you were working on. Have you brought those
4 photographs with you?

5 A Yes, I have.

6 MR. SGRO: Could I state for the record,
7 before we turn it over, the photograph of this print
8 is part of the records of the Independent Counsel.
9 We checked with them before turning it over, and they
10 gave the go ahead.

11 BY MR. BEN-VENISTE:

12 Q Are these identical copies?

13 A They are identical copies, except one of
14 them has a red line with PP under it, denoting palm
15 print, and the other one doesn't.

16 Q Let me ask you what for you is a very basic
17 question. What makes this a palm print?

18 A It's just the large area, the expand -- the
19 straight ridges.

20 Q No one has fingers that large, I take it?

21 A No.

22 Q Is this a true to scale photograph?

1 A Yes, it is.

2 Q Now, I have here marked as 68 a photocopy,
3 which I believe is the material that you worked
4 with. I'd like you to look at it and see whether you
5 can confirm that assertion.

6 A That appears to be the same -- what I
7 examined.

8 Q On Exhibit 68, could you identify the
9 portion of that exhibit which corresponds to -- let
10 me mark this, if I may.

11 MS. SIMONTON: Excuse me, counsel. We'll
12 provide it formally in accordance with the procedures
13 that have been worked out, but for now, you can refer
14 to it anyway you want.

15 MR. BEN-VENISTE: Let's mark it as Hupp
16 Exhibit 1.

17 (Hupp Exhibit 1 identified.)

18 BY MR. BEN-VENISTE:

19 Q I show you Hupp Exhibit 1 and ask again
20 whether you would be kind enough to identify in
21 Exhibit 68 which piece of paper corresponds to the
22 palm print in Exhibit Hupp 1?

1 A Without sitting down -- and since the
2 portion of the print that this is on, where this
3 print is at, it does not show up in the Xerox copy.
4 I'm not sure that I could, by looking at this, tell
5 exactly where it did come from.

6 Q It's correct, is it not, that the palm
7 print was on a portion of the paper that contains no
8 writing?

9 A That is correct, yes. The extreme edge of
10 the paper.

11 Q And from your recollection, given the fact
12 that writing seems to cover most of the top of that
13 document, do you recall whether it was from the
14 bottom segment?

15 A I think what we're going to find is that
16 this was out on the left edge of the paper, to the
17 left of the writing. As we see, in the picture,
18 there's a hole punched in the paper and also there is
19 a line running down. If memory serves me correct,
20 this was a sheet of paper that could be put into a
21 notebook and flipped, and it has a line running down
22 the left edge of the paper.

1 Q So it is yellow three-hole punched paper?

2 A To the best of my recollection, yes, it
3 was.

4 Q And it had a vertical line running down the
5 left side?

6 A That is correct.

7 Q And was it lined or unlined, other than the
8 vertical line?

9 A It was lined. You can see the lines
10 appearing in the photograph. They appear white as
11 opposed to dark.

12 Q Did you make any effort to determine, or
13 could you determine whether that palm print extended
14 to any other portion of the writing?

15 A To the best of my recollection, it was
16 merely on that piece of paper. There was no other
17 ridge detail developed on any other portion of the
18 paper.

19 Q Normally, if you were dealing with one
20 integrated piece of paper rather than a number of
21 scraps of paper, would you expect, given the size of
22 Hupp Exhibit 1, that a palm print would extend beyond

30

1 the borders of the fragment that you photographed?

2 A That would be mere speculation, because
3 bearing in mind, the palm print merely touches. You
4 don't have to have a great deal of area touched.
5 Just by touching, as I'm touching the table here,
6 there's a very small portion of my palm touching that
7 piece of paper.

8 Q Couldn't you tell from the nature of the
9 print that was left whether this indicated a flat
10 palm or the side of a palm as one would use in making
11 a chopping motion?

12 A This is actually the base of a left palm in
13 this area in here.

14 Q So this is the meaty area of the left palm,
15 you're indicating, closest to the thumb?

16 A No, the area under the little finger down
17 at the base of the palm. Generally in this area
18 right here is where it's going to be found.

19 Q Is that given a technical name?

20 A Well, we call it the edge of the palm.
21 There's several terminologies out there, but I just
22 call it the heel of the palm, the base of the heel of

1 the palm.

2 Q I didn't learn a lot of anatomy. I mostly
3 heard about the back of a hand when I was growing
4 up.

5 MR. SGRO: You experienced the anatomy.

6 MR. COMEY: Prints all over your head.

7 MR. BEN-VENISTE: Some may still be there.

8 BY MR. BEN-VENISTE:

9 Q In answer to my initial question, this
10 would have been made consistent with a hand being
11 placed in a palm down position on the paper?

12 A It would be more of an area something like
13 this, not a flat palm down, but -- I don't know what
14 you want to call it, 45 degree angle or something
15 like that.

16 Q In talking with anyone about the assignment
17 that you received, did you learn the circumstances of
18 how the material was provided to the FBI?

19 A No.

20 Q Had you been told that, in the presence of
21 an official of the Department of Justice, an
22 individual had assembled the various pieces of paper

32

1 that you were called upon to analyze without using
2 any gloves, would that have given you some possible
3 indication of at least a possible source of
4 comparison?

5 A Yes, it would.

6 Q And I take it from what you have told us,
7 that nobody advised you that Bernard Nussbaum, had in
8 the presence of Department of Justice officials,
9 assembled the pieces of paper into a unified document
10 similar to what we see now in 68?

11 A To the best of my recollection, no, I was
12 not informed of that.

13 Q What did you do next in your analysis?

14 A After I processed it and had it
15 photographed, of course, I went back and examined the
16 photograph with the actual latent print of the item
17 itself to make sure what was attached accurately
18 depicted what was there.

19 Then I moved on to the next process, which
20 was an inhydrin process. There again, I didn't
21 develop any latent prints.

22 Q What does inhydrin means?

1 A An inhydrin is a chemical like DFO,
2 1,diazofluorene 9 which we used to process for
3 fingerprints. It actually reacts with the amino
4 acids present in sweat.

5 Q And that proved negative?

6 A That proved negative.

7 Q Once you raised the print with the first
8 chemical testing, does that mean that other chemical
9 testings of the same area of the questioned document
10 would not be undertaken?

11 A No. We process -- we have sort of a set
12 procedure that we go through to develop latent
13 prints, which enables us to develop all of the latent
14 prints we possibly can.

15 Q So in other words, you're using -- you're
16 starting with the least potentially disruptive method
17 of analysis?

18 A That is correct.

19 Q And going to other methods that might
20 conceivably interact with the questioned material and
21 change it in some way?

22 A Yes, that's correct.

1 Q And what did you do next?

2 A At that point, I ceased my examination. I
3 attempted to locate palm prints, which were on file
4 for the individuals who had been named and found that
5 there were none in our files at that time, and I
6 informed our Washington field office of the results
7 by telephone and sent a typewritten report out to
8 them.

9 Q I call your attention again to FBI 80 where
10 it says "specimen received hand-delivered by Special
11 Agent Scott Salter"?

12 A That's correct.

13 Q July 30, 1993?

14 A That's correct.

15 Q It says specimens and then Q1, which you've
16 identified as the material you were provided. It
17 says "28 pieces of torn paper bearing original
18 handwriting"?

19 A That's correct.

20 Q Well, actually, it is incorrect, isn't it?

21 A It may very well -- that's what I took --
22 this was what was provided to me by the laboratory

1 division and I think we did come up with a
2 discrepancy in the count, if memory serves me, and I
3 don't recollect now what it was.

4 Q Who advised you that there was a
5 discrepancy?

6 A Well, I had talked to the examiner in the
7 laboratory who examined it and said that I had a
8 different count. And for the life of me, I don't
9 remember exactly what the count was.

10 Q I'm not sure I understand the process now.
11 I didn't think, when you first described this, that
12 someone else performed any analysis or test on the
13 material. Who in the laboratory are you referring
14 to?

15 A That was a document examiner. We have a
16 set procedure. When anything comes into the
17 laboratory that requests another examination in
18 addition to fingerprints, it always goes to that
19 examination first because we have a potential to
20 destroy it.

21 Q I'm sorry, what was that test?

22 A That was just a -- all he did was

1 photograph it and examine it to make sure it was
2 actually original pen strokes, or whatever a document
3 examiner -- whatever he does.

4 Q When you say the "original pen strokes,"
5 you mean really a handwriting analyst --

6 A That's correct.

7 Q -- to determine whether this was a studied
8 copy of someone else's handwriting?

9 A Or whatever their examinations are. He
10 would photograph it and make his initial examinations
11 before I process it because mine is destructive to
12 his examination.

13 Q And who was that?

14 A Let me think. Henry -- it's right on the
15 tip of my tongue -- I don't know right offhand. I
16 can't think of his last name.

17 Q But he is in the questioned document
18 division?

19 A That's correct.

20 Q And he's a handwriting analyst?

21 A He's a handwriting analyst, yes.

22 Q How long did he have the material, as far

1 as you know, before you got it?

2 A It couldn't have been very long because it
3 was brought in the same day, and I got it that
4 afternoon, so I don't know exactly what time his
5 initial receipt was.

6 Q So his transmission to you was that there
7 were 28 pieces of torn paper?

8 A That's correct.

9 Q And when you made your report, you counted
10 how many pieces?

11 A That escapes me, and I think we went back
12 and agreed 28 was the number and left it at that. I
13 really -- I remember that the discussion --

14 Q Let me call your attention to the third
15 page.

16 A My copy I can't read. You've got my good
17 copy.

18 Q Let me read it over your shoulder.
19 Actually, it's the fourth page of what you've got.
20 Yours is somewhat easier to read than mine. This is
21 designated FBI 82 what does it say? Would you read
22 that into the record?

1 A The whole thing?

2 Q Yes.

3 A "One latent palm print of value. Developed
4 on one piece of yellow paper, part of Q1. No palm
5 prints here for Neuwirth, Nussbaum, Burton, Foster or
6 Sloan. WMFO advised of results by telephone. Specs
7 enclosed. Enclosure 28."

8 Q What does enclosure 28 mean?

9 A That means that we returned 28 pieces of
10 paper.

11 Q Is that your handwriting, sir?

12 A That is my handwriting.

13 Q When you say "no palm prints here for
14 Neuwirth, Nussbaum, Burton, Foster or Sloan," by
15 that, you meant on file --

16 A Yes.

17 Q -- at the FBI?

18 A That is correct.

19 Q And then what happened next in your
20 analysis?

21 A That was the conclusion of my analysis. I
22 dictated a written report and returned it to the

1 investigating agent.

2 Q And what written report is that?

3 A That is FBI 67, the very first page.

4 Q May I see what it is you're referring to?

5 A It's this right here, that right there.

6 Q And this is the report that you made on --

7 is this your report?

8 A That is correct.

9 Q And that is dated 8/2/93?

10 A That is correct.

11 Q And you indicate that the specimens were
12 received on July the 30th, 1993?

13 A Yes.

14 Q And that the specimens are identified as
15 "Q1, 28 pieces of torn paper bearing original
16 handwriting"?

17 A That is correct.

18 Q The conclusion is that the specimens were
19 examined and one latent palm print of value was
20 developed on one piece of paper, part of Q1?

21 A That's correct.

22 Q What does "of value" mean?

1 A It means that upon examining it, I found
2 enough of the identifying characteristics that I felt
3 I could identify it, given I had the proper known
4 exemplars to work with.

5 Q And you indicate that you are transmitting
6 the specimens. The specimens are enclosed. How were
7 they being enclosed?

8 A They would be put into a plastic envelope,
9 placed into an envelope very much like this and the
10 report would be attached to it and it would be
11 transmitted by mail.

12 Q The "this," you're showing a letter size --

13 A Class envelope, yes.

14 Q And it says underneath "the specimens are
15 enclosed. Enclosed (28)."

16 A Yes.

17 Q And then what happened to the envelope that
18 you had developed -- to whom did you transmit?

19 A I transmitted it back to the special agent
20 in charge of the Washington metropolitan field
21 office.

22 Q And who is that?

1 A At that time I don't really -- I don't know
2 who it was.

3 MR. BEN-VENISTE: Counsel, can you provide
4 that information simply from your knowledge?

5 MS. SIMONTON: I believe at that time that
6 was Bob Bryant, but just for clarification, the fact
7 that something is transmitted to SAC doesn't mean it
8 was him.

9 MR. BEN-VENISTE: Thank you for that
10 clarification.

11 MS. SIMONTON: I think Louis Hupp would be
12 a better person to explain.

13 MR. BEN-VENISTE: I direct the question to
14 him. You're off the hook. Step down, no further
15 questions at this time.

16 THE WITNESS: Under normal procedures, when
17 we receive evidence from a field office or for that
18 matter, from a chief of police, we send it back to
19 particularly the field office. We send it back to
20 the SAC, and it's taken back and their file numbers
21 and various things determines who gives it back. But
22 in any instance, it would go to file. It's not to

1 him personally. It's just merely an address that we
2 would use. Many times, we don't know who the
3 investigating agent is in the case, unless we have
4 telephone conversations with him.

5 BY MR. BEN-VENISTE:

6 Q Did there come a time when you heard
7 something further about the material that you had
8 examined in early August, on July 30th, and then
9 through early August?

10 A Nothing other than -- of course, I received
11 the communication itself with the letter and then a
12 telephone call stating what people were to be
13 compared. After I sent my report back, it was
14 literally out of my hands. I didn't have any further
15 thing to do with it at that point in time.

16 MS. SIMONTON: Just a point of
17 clarification. This deposition is all limited to the
18 period of time July and August of 1993 and does not
19 reflect anything beyond that period of time.

20 BY MR. BEN-VENISTE:

21 Q Did there come a time that you learned that
22 the count which Henry of the questioned documents

1 division did and your count of 28 pieces did not
2 reflect the number of pieces that the FBI had in its
3 possession at some later time?

4 A No, I don't remember hearing any more about
5 it. And I vaguely remember the fact that we had a
6 discrepancy, and I thought at the time -- or now,
7 that it could have been higher, in that one piece
8 came apart while I was processing. I really don't
9 recollect, but there was no further conversation with
10 me about the count, no.

11 Q Well, when you heard that there was a
12 discrepancy, from whom did you hear?

13 A I think what it was was when the
14 examination was concluded on the evening of the 30th,
15 I think it was at that time, when I was reassembling
16 or putting the pieces back initially that something
17 came up -- like I say, I don't recollect what the
18 count was -- and at that time I contacted the
19 document examiner on a Monday morning and that was --
20 I just contacted him, if that's what was there.

21 Q I'm sorry, you contacted Henry?

22 A Yes.

1 Q And you said to him what?

2 A Like I say, that's something that would go
3 back two years. I really can't recollect exactly
4 what I said. I'm sure we discussed, like I said, the
5 totals and whatever was resolved, was determined that
6 28 would be proper and correct at that time, and
7 that's what I returned.

8 Q That 28 was proper and correct?

9 A That is correct. Mathis is his last name,
10 M-a-t-h-i-s.

11 Q Henry Mathis?

12 A Mathis, yes.

13 Q Thank you. Do you have with you a
14 photograph of the entire document?

15 A No, sir.

16 Q Can you tell from Exhibit 68, which I have
17 shown you previously and which you have identified as
18 being a photocopy of the questioned writing, how many
19 pieces there are?

20 A It appears to be about 24 but then again, I
21 have a photograph of one piece that doesn't show up
22 so I'm not sure, to the left, what's out there. And

1 that's a very rough guess because I'm counting and
2 trying to count where the words separate and see
3 where the lines are.

4 Q Now, when you assembled the pieces, were
5 there any pieces that appeared to be missing?

6 A Actually, when I received it, it was
7 assembled very much like that document appears there.

8 Q Referring to 68?

9 A Yes. All I did was remove it from the
10 protective cover and process it and there was a
11 spot -- open spot in it as it shows there.

12 Q Did you make any note of that in your
13 report?

14 A No, because that was for the document
15 examiner to do that.

16 Q Let me ask you to look at what has been
17 marked as FBI 85. Do you see under description of
18 evidence -- is this your handwriting, sir?

19 A No, sir.

20 Q Do you know whose handwriting it is?

21 A No, sir. I can only assume that it was
22 Scott Salter.

1 Q Then it says delivered by Scott Salter?

2 A Right.

3 Q Here it says "description of evidence: 27
4 pieces of paper which comprise one sheet of yellow
5 paper upon which is handwriting in ink."

6 A That is correct.

7 Q This is dated 7/30/93?

8 A That is correct.

9 Q Is this something which would have been
10 attached to the paperwork that you would have been
11 provided?

12 A Yes, and this may very well have been the
13 discrepancy that we discussed, the 27 versus 28.

14 Q So Mr. Salter counted 27 and you counted
15 28?

16 A That's very possible, yes. We did come up
17 with 28 in any event.

18 Q I take it at the time you started counting
19 these, you were either using latex gloves or some
20 other protective --

21 A Actually, it was in a protective cover when
22 it was done so I was looking -- using tips would

1 drive me crazy.

2 Q At the point you have left us here in this
3 narrative, you have identified a usable palm print,
4 that is one which you could match if you had a
5 comparable known palm print of an individual?

6 A That is correct. That is correct.

7 Q You looked for palm prints of the five
8 individuals whose names were provided to you,
9 Mr. Neuwirth, Mr. Nussbaum, Mr. Burton, Mr. Foster
10 and Mr. Sloan, and you learned that the FBI did not
11 have palm prints for any of those individuals?

12 A That is correct.

13 Q So you could rule out at that point none of
14 them?

15 A That's correct.

16 Q We have had testimony before this hearing
17 that Bernard William Nussbaum, one of the individuals
18 listed, was advised that, after providing palm prints
19 to the FBI, that indeed his palm print matched the
20 latent palm print that you had been able to discover
21 in your analysis. Can you confirm that?

22 MS. SIMONTON: At this point, I think that

1 goes -- he can answer the question as long as it's
2 limited to July and August of 1993. Could you
3 confirm that, as of your knowledge on July and August
4 of 1993? I think those are the ground rules we've
5 been operating under at this point.

6 MR. BEN-VENISTE: I'm not asking for
7 anything other than this witness's analytical work.
8 I'm not asking for any testimony that he gave to the
9 grand jury. We have had testimony and it's important
10 for us to confirm it. Are you directing him not to
11 answer?

12 MS. SIMONTON: That's our agreement with
13 the Independent Counsel. I'll defer to him since
14 this witness does work for the Independent Counsel in
15 part and since he performs the examinations for the
16 Independent Counsel, Mr. Starr as well as Mr. Fiske,
17 his predecessor, our understanding of the ground
18 rules that have been established is that he is only
19 allowed to answer questions relating to the work he
20 performed for the FBI prior to the appointment of
21 Mr. Fiske.

22 BY MR. BEN-VENISTE:

1 Q Were you employed by the FBI in 1994?

2 A Yes.

3 Q And you continue to be employed by the FBI;
4 is that correct?

5 A That is correct.

6 Q Are you employed by the Independent
7 Counsel?

8 A No, sir.

9 Q When you received later assignments in this
10 case, were the assignments given to you by the
11 Independent Counsel, or were they given to you by
12 your supervisors at the FBI?

13 MR. KAVANAUGH: That question goes beyond
14 the scope of what we had agreed upon would be the
15 questions.

16 MR. BEN-VENISTE: Are you directing him not
17 to answer that question?

18 MR. KAVANAUGH: I'm not directing him.

19 MR. SGRO: I think part of the ground rules
20 that we established for the deposition, pursuant to
21 the request of the Independent Counsel, questioning
22 would be limited to Mr. Hupp's work in July and

50

1 August of 1993. Because of our --

2 MR. BEN-VENISTE: Who did you make those --

3 MR. SGRO: In a letter dated --

4 MS. SIMONTON: Would you like us to fax you
5 a copy of the letter?

6 MR. SGRO: The letter is dated July 12 to
7 Messrs. Giuffra and Cole, the last paragraph.

8 MR. BEN-VENISTE: I would ask at this time
9 that Mr. Kavanaugh, who is present here, consult with
10 a senior official or with Judge Starr to determine
11 whether, under the circumstances that I have
12 outlined, he will not allow Mr. Hupp to answer that
13 one question so that we may have closure on this
14 issue.

15 MR. KAVANAUGH: The one question, can you
16 state it again?

17 MR. BEN-VENISTE: Can you confirm that
18 following the receipt of palm prints known to be
19 those of Mr. Nussbaum and others, that you concluded
20 that the questioned palm print on the Foster writing
21 matched the known palm print of Bernard Nussbaum.

22 MS. SIMONTON: Just for the record, the FBI

1 has no objection to answering questions, other than
2 we don't want to violate an agreement between the
3 Office of the Independent Counsel and the Senate.

4 MR. BEN-VENISTE: If I understand that
5 completely -- and perhaps we can have some closure
6 without any waiver on the part of Independent Counsel
7 of other rights that they may wish to protect. But
8 under the specific circumstances here presented, I
9 would request, and I believe Mr. Comey joins me in
10 that request, that this information be provided.

11 MR. KAVANAUGH: That's the exact question
12 that we are not going to answer and that's already
13 been confirmed by Judge Starr. I'll call him again
14 and get the same answer, but if you want to take a
15 break --

16 MR. BEN-VENISTE: You can tell him that
17 counsel join in making this request. You can explain
18 to him the circumstances. Perhaps Independent
19 Counsel Starr was unaware of the fact that we had
20 developed testimony in this hearing that Mr. Nussbaum
21 was advised that the print was his.

22 MR. KAVANAUGH: He's aware of that?

1 MR. BEN-VENISTE: I request that we have
2 the courtesy of closure so we can present the
3 Independent Counsel's position to our client.

4 MR. KAVANAUGH: Take a break.

5 (Recess.)

6 MR. BEN-VENISTE: Mr. Kavanaugh, you have
7 had an opportunity to consult with your colleagues at
8 the Independent Counsel's office. Could you provide,
9 for the record, the decision by Independent Counsel
10 and such rationale as you feel you could provide for
11 that decision.

12 MR. KAVANAUGH: I consulted with Deputy
13 Independent Counsel Mark Touhey, T-o-u-h-e-y, and he
14 said we're not prepared to change the ground rules
15 that have been set prior to this deposition. And
16 that members of the Independent Counsel team and
17 people who have done work for the Independent Counsel
18 are instructed not to divulge information to the
19 Senate and work they have done for the Independent
20 Counsel.

21 MR. BEN-VENISTE: And you made it known in
22 the intervening time between when the ground rules

1 for this deposition were set that testimony before
2 this committee had revealed the information that I
3 have provided you concerning what Mr. Nussbaum had
4 been advised; is that correct?

5 MR. KAVANAUGH: We have been informed, not
6 by members of this staff or any members from this
7 committee, but by counsel of a witness of what that
8 attorney had informed the committee with respect to
9 the palm print.

10 MR. BEN-VENISTE: In taking into
11 consideration the intervening circumstance of further
12 information developed in the course of the Senate
13 inquiry, Independent Counsel adheres to the position
14 that they will direct the Department of Justice to
15 direct the witness not to answer the question which
16 Mr. Comey and I have joined in putting to this
17 witness.

18 MR. KAVANAUGH: That's correct.

19 BY MR. BEN-VENISTE:

20 Q And just to complete the record, Mr. Hupp,
21 will you answer the question?

22 A No.

1 Q And that is on the direction of counsel?

2 A That is on the direction of counsel.

3 MR. BEN-VENISTE: Thank you very much,
4 sir. We may wish to get back in touch with you. Or
5 the record.

6 (Discussion off the record.)

7 EXAMINATION

8 BY MR. COMEY:

9 Q I just wanted to ask you really two
10 questions in two small areas. Mr. Ben-Veniste had
11 asked you about circumstances and the factors that
12 might influence whether or not someone left a print
13 and I think the two of you got close to it in another
14 area when you talked about latent prints of value. I
15 take it that a person can leave a print on a piece of
16 paper, for example, that is not of value. Is that
17 fair?

18 A That is correct, yes.

19 Q So you, as an examiner, can actually see
20 that someone -- or some portion of a person's hand
21 has touched a piece of paper but yet you're not able
22 to develop a print that is useful in making

1 identification?

2 A That is correct.

3 Q How many identifying characteristics do
4 you, in your work, like to have before you consider a
5 palm print like the one in this case to be of value?

6 A I have no set number of points that I feel
7 I need to make an identification. Each latent is
8 based on its own merit. Rather than get into
9 numbers, I can tell you that the least number of
10 points I have identified a fingerprint or a print on
11 is seven. The least number of points that I have
12 testified to has been eight. But the only reason I
13 didn't testify to seven is because I wasn't requested
14 to. Whatever I feel comfortable with is just that
15 number of points.

16 Q On Q1, the lab exhibit made up of the
17 individual pieces of lined paper, were there prints
18 not of value that you were able to see?

19 A Not that I recollect. There again, we only
20 photograph latent prints of value, and the ones that
21 are mere -- a few tracings or a few outlines we don't
22 pay any attention to. We don't photograph, so I

1 would really have no recollection conclusively on
2 that.

3 Q And you wouldn't have made notes of such a
4 thing?

5 A No.

6 Q So the fact that you identified and
7 photographed this addition -- whatever we called it,
8 the little heel of the left hand -- doesn't mean that
9 there were no other marks on the paper indicating
10 human contact?

11 A That is correct.

12 Q It simply means that this was the one piece
13 of human contact that you were confident you could
14 make an identification from?

15 A That is correct, yes, sir.

16 Q And just to clarify, you and
17 Mr. Ben-Veniste in your questions and answers were
18 talking about the 28 pieces of paper with handwriting
19 on them, the way the report reads?

20 A That's correct.

21 Q I take it, just to make the record
22 accurate, not all 28 pieces have handwriting on them?

1 A That's correct.

2 Q For example, the one you found the latent
3 print on has no writing at all?

4 A That is correct.

5 MR. COMEY: I think that's it. Thanks.

6 THE WITNESS: If I might add one thing, in
7 looking at the notes now, the discrepancy in the
8 count, the reason it was not resolved outside of
9 internally in the lab, was if we have more than what
10 they say, we don't have a problem. If we have less,
11 then we might clarify that issue, so that is one
12 explanation. As I said, I thought that there turned
13 out to be more than we anticipated and we did clarify
14 there was 28, not 27, and merely sent the report back
15 with that.

16 MR. BEN-VENISTE: Thank you very much, sir.

17 THE WITNESS: Thank you.

18 (Whereupon, at 11:13 a.m., the deposition
19 was concluded.)

20

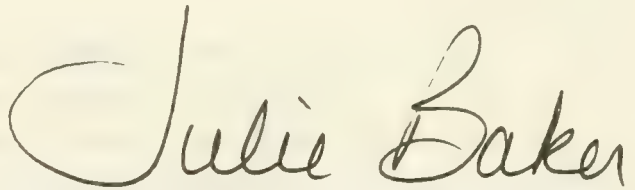
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LOUIS GALE HUPP

CERTIFICATE OF NOTARY PUBLIC & REPORTER

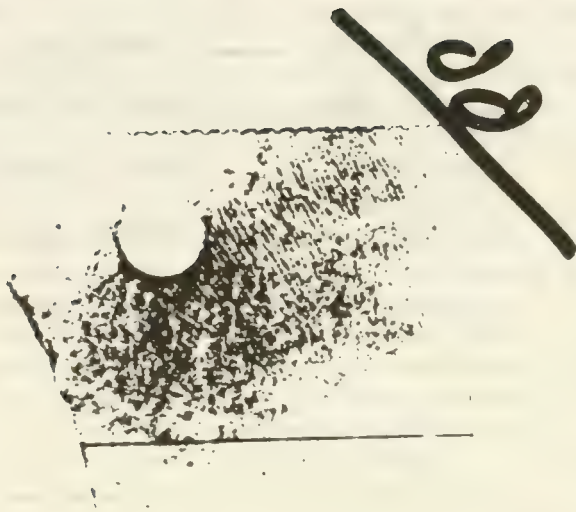
I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997



L5024

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**DEPOSITION OF JACK QUINN
IN RE: S. RES. 120**

FRIDAY, JULY 14, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JACK QUINN, called for examination pursuant to notice of deposition, at 11:15 a.m. in Room 640-A of the Hart Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

JAMES B. COMEY, Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PETER K. BLEAKLEY, Esq.
Arnold & Porter
555 Twelfth Street, NW
Washington, DC 20004-1202
On behalf of the Deponent.

ALSO PRESENT: NGUYEN-HONG HOANG

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Jack Quinn | |
| by Mr. Ben-Veniste | 3 |
| by Mr. Comey | 20 |
| by Mr. Ben-Veniste | 30 |
| by Mr. Comey | 34 |
| Errata | 4373 |

P R O C E E D I N G S

(11:15 a.m.)

Whereupon,

JACK QUINN

was called as a witness herein, and having been first
duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BEN-VENISTE:

Q Would you state your full name for the
record, please?

A John Michael Quinn.

Q Mr. Quinn, my name is Richard Ben-Veniste.
I am minority counsel to the Senate Committee
investigating Whitewater and other matters.

You've been asked to testify here today in
connection with our inquiry into the general subject
of the handling of Vincent Foster's papers following
his death in July, 1993.

Here present is Jim Comey, who represents
the majority.

And Ms. Nguyen-Hong Hoang, who is an
intern working in our office.

4

Mr. Quinn, how are you employed?

A I am the Chief of Staff to the Vice
President of the United States. My title is actually
Assistant to the President, and Chief of Staff and
Counselor to the Vice President.

Q How long have you been Chief of Staff to
the Vice President?

A I have been Chief of Staff since early in
July, 1993.

Prior to that time, for a period of about
two months, I was Acting Chief of Staff.

And prior to that time, and commencing on
inauguration day, I was Counsel and Deputy Chief of
Staff to the Vice President.

Q Prior to that time, how were you employed?

A I was an attorney here in Washington with
the law firm of Arnold & Porter, where I was employed
for approximately 16 and a half years.

Q Would you be kind enough to provide
details concerning your educational background?

A I attended college at Georgetown
University and law school also at Georgetown

1 University.

2 Q When did you graduate law school?

3 A I graduated from law school in 1975 an
4 undergraduate in 1971.

5 Q Thereafter you joined the firm of Arnold &
6 Porter?

7 A I joined Arnold & Porter one year after my
8 graduation from law school.

9 Q And in the interim?

10 A In the interim, I worked for Congressman
11 Morris Udall and served as his campaign director in
12 his unsuccessful effort in 1976.

13 Q Did there come a time, Mr. Quinn,
14 following Vince Foster's death, when you had occasion
15 to discuss with Bernard Nussbaum and others, a
16 request made by investigators who were looking into
17 Mr. Foster's death, about the scope of requests made
18 of Mr. Nussbaum by those investigators?

19 A There did.

20 Q If I were to tell you that Mr. Foster died
21 on July 20th, 1993, and that the search occurred on
22 July 22nd, 1993, would that help place in your

6

1 recollection when the meeting that I've asked you
2 about occurred?

3 A Yes.

4 My recollection is that I had a meeting
5 with Mr. Nussbaum and several others. Then, on the
6 morning of the 22nd of July --

7 Q Could you be kind enough to provide us
8 with your best recollection of how you came to be
9 involved in that conversation or meeting that day?

10 A Yes, I will.

11 I was approached by Mac McLarty. I
12 believe it was on the same morning, though I can't be
13 a hundred percent certain about it. It's conceivable
14 it was the night before, but my best recollection is
15 that it was on that morning.

16 He indicated to me that there was to be a
17 review of the materials in Mr. Foster's office. And
18 he asked me if I would have a conversation with Mr.
19 Nussbaum in order that I might come to know what
20 Bernie intended to do, how he intended to handle that
21 review and in essence, to render a second opinion, if
22 necessary.

1 Q Thereafter, did you meet with Mr. Nussbaum
2 and others?

3 A I did.

4 Q What is your recollection of where the
5 meeting took place?

6 A The meeting took place in the Vice
7 President's office in the West Wing of the White
8 House at a time when the Vice President was not
9 present, so that it was available to me for my use.

10 Q To the best of your recollection, who else
11 was present?

12 A To the best of my recollection, and I was
13 not entirely clear on this point, but I believe that
14 present at the meeting were Steve Neuwirth, Bill
15 Burton, perhaps Bruce Lindsey, and possibly one or
16 even two others.

17 I just cannot be certain who else was
18 there.

19 Q Of those whom you are relatively certain
20 were present, would those be Mr. Nussbaum, Mr.
21 Neuwirth, and Mr. Burton?

22 A Yes.

1 Q Could you describe for us, to the best of
2 your recollection, the substance of the conversation
3 that took place?

4 A Yes.

5 Let me say preliminarily that I have no
6 recollection of the conversation itself involving
7 people other than myself and Bernie, and that's one
8 reason it's difficult to remember if others were
9 there.

10 The essence of the conversation was a
11 disagreement between me and Bernie as to the proper
12 fashion in which to conduct a review of the documents
13 in Foster's office.

14 He, Bernie, -- let me restate this.

15 It was my impression at the outset of the
16 conversation that Bernie intended to give relatively
17 free rein, relatively free access to those papers to
18 the Park Police.

19 I objected to his proceeding in that way.

20 Q What was the nature of your objection?

21 A My concern was that proceeding in that
22 fashion would compromise materials that either were

1 of a classified nature, in the event that such
2 materials were present in his office, or that they
3 might compromise materials protected by a privilege,
4 be it attorney-client or of an Executive nature.

5 With respect to classified materials, I
6 was aware at that time, as I am now, that from time
7 to time, people involved in counsel activity for the
8 President or the Vice President have access to
9 materials that are classified, that are of a
10 sensitive nature in terms of intelligence gathering
11 the like.

12 It seemed unreasonable to me simply to
13 provide access to the Park Police to the office in a
14 circumstance where such materials might be present,
15 without having first undertaken a review on the part
16 of authorized individuals to make a determination
17 whether such materials were present, and if so, how
18 the remainder of the review should be conducted.

19 Q So was it clear to you that Mr. Nussbaum
20 was entertaining the notion that Park Police and
21 other investigators, the FBI, and the Secret Service,
22 which was present in a non-investigatory but rather

10

1 facilitating role, and individuals from the
2 Department of Justice would be invited into the
3 office of Mr. Foster while Mr. Nussbaum would go
4 through the materials that were in Mr. Foster's
5 office, searching for either a suicide note or other
6 writing evincing the state of mind of Mr. Foster, or
7 any material constituting an extortion or blackmail
8 threat?

9 A Let me take that apart in a couple of
10 ways.

11 First of all, I have no present
12 recollection that the individuals to have searched
13 the office included people other than the Park
14 Police.

15 I mean, at this point, my recollection is
16 that it was the Park Police who were undertaking the
17 search. It's entirely possible that I was aware that
18 others would be involved, but I don't recall that to
19 be the case.

20 Q You knew that the Park Police was the lead
21 investigative agency at that point?

22 A Correct.

1 Q Was it your view that they ought not even
2 be allowed in the office physically until a detailed
3 search could be made of the office to determine what
4 classified material might be present?

5 A Correct.

6 Q What position did Mr. Nussbaum take?

7 A He took the position that that would be
8 unacceptable to the investigative personnel, and that
9 he would not be able to sustain the position I
10 advocated.

11 Q Did he mention any concern that the
12 procedure that you outlined might cause a substantial
13 delay in providing the opportunity to search for the
14 materials that the investigators stated that they
15 were looking for?

16 A I don't recall. He may have, but I just
17 don't recall that specifically.

18 Q When he said that he would be unable to
19 sustain that position, did you take that to mean that
20 he disagreed with the philosophy of what you were
21 advocating as opposed to simply not being able to
22 communicate such a determination to the

1 investigators?

2 A At this point, with the passage of time,
3 it is my clearest recollection that he responded to
4 me to the effect that he could never sell the
5 position that I had advocated.

6 There came a point in this discussion
7 where it became clear to me that Bernie was
8 advocating a procedure pursuant to which he and he
9 alone would first lay eyes on any particular document
10 or file, that he would provide an oral description of
11 the document or file to the Park Police or others who
12 might be there, and that consequently the concern
13 that I raised about the possible exposure of
14 documents to people to whom they should not be
15 exposed could be overcome.

16 Now I must emphasize at this point, that I
17 cannot be a hundred percent certain whether the
18 position I've just described is one that evolved in
19 the course of our discussion or whether it was one
20 that he had in mind prior to that time, and that I
21 didn't come to understand that to be his proposal
22 until some point during the course of the discussion.

1 But into the conversation, I came to
2 understand that that was how he wanted to proceed.

3 This whole conversation, by the way, it's
4 my recollection at this point, was something on the
5 order of 20 minutes long.

6 Q Now at the time you had this conversation,
7 were you, by that time, the Chief of Staff to the
8 Vice President?

9 A I was. I would have literally just become
10 Chief of Staff some time in the same month.

11 Q So that since the inauguration and up
12 until more or less that point in time, you had served
13 in a similar capacity for the Vice President, as Mr.
14 Nussbaum was serving for the President of the United
15 States?

16 A Yes, that's correct. In fact, even after
17 becoming Chief of Staff, I took the title of
18 Counselor to the Vice President because I did
19 continue to have some duties in terms of providing
20 advice that might be of a legal nature.

21 Q Prior to the time that you had the
22 conversation with Mr. McLarty in which he asked you

1 to counsel with Mr. Nussbaum, had anyone communicated
2 to you that you ought to advocate a particular
3 position with Mr. Nussbaum on this subject?

4 A No.

5 Q Did Mr. McLarty tell you what he wanted
6 you to say to Mr. Nussbaum?

7 A He did not.

8 Q In terms of substance, did anyone at all
9 communicate to you what you ought to say to Mr.
10 Nussbaum?

11 A No, no one did.

12 Q And indeed, prior to sitting in the
13 meeting with Mr. Nussbaum, do you recall providing
14 anyone with your thinking on the subject, or was your
15 thinking developed during the course of that meeting?

16 A I can't be a hundred percent certain about
17 this specifically. I do not recall at what point I
18 became aware that Bernie intended to provide access
19 to the documents in Vince's office to the Department.
20 I don't recall whether I was told that in the initial
21 conversation with McLarty or whether someone else
22 informed me of that fact, or whether I became aware

1 of it for the first time in the conversation with
2 Bernie in the Vice President's office.

3 I just don't recall that.

4 Q When you use the term, provide access, do
5 you mean that they would actually physically be in
6 the same room as the documents?

7 A No. I mean be able to view the documents
8 without having had someone who, number one, had the
9 appropriate security clearances and, number two, who
10 enjoyed the privileges in question, review the
11 materials first.

12 Q Do you recall that Mr. Nussbaum told you,
13 during that meeting, that it was his intention to
14 allow the Park Police to review the materials in the
15 first instance, or do you think you may have received
16 that impression erroneously and that it was clarified
17 by Mr. Nussbaum during that meeting?

18 A I certainly had that impression at the
19 beginning, and for a good deal of the time during
20 which that meeting took place I had that impression.
21 I know that I was quite hostile to that impression,
22 so I recall that I was under that impression.

1 I do not believe I was under that
2 impression erroneously. I believe that I was correct
3 in understanding, at some point, that that procedure
4 was the one he intended to follow. It's entirely
5 possible that I was simply misunderstanding what he
6 intended, but that is not now my impression.

7 Q When he said to you that he intended to
8 review the materials in the presence of the Park
9 Police and/or others and provide an oral description
10 to them of the materials, was that a procedure that
11 you objected to?

12 A It was not a procedure that I objected to.
13 It's a procedure that I thought the investigative
14 authorities would find unacceptable.

15 I couldn't, for my own part, I couldn't
16 understand why they would find that acceptable, so
17 that I thought, as a practical matter, it wasn't
18 really a viable alternative.

19 Q You wanted them, essentially what you're
20 saying is that you wanted Mr. Nussbaum to conduct a
21 search for the material that they had described that
22 they were looking for?

1 A No.

2 Let me tell you what I thought should be
3 done.

4 I thought that someone with the
5 appropriate clearances and who was privy to the
6 appropriate privileges should review the materials in
7 the office and identify any which would, number one,
8 involve the disclosure of classified materials and,
9 number two, involve the disclosure of materials which
10 were subject to a privilege.

11 I thought that those materials should be
12 identified and segregated, and that once they were,
13 then there should be consideration, along with the
14 investigative authorities, of how to handle those
15 materials, and how, if necessary, it would be
16 appropriate to handle the subsequent disclosure of
17 them.

18 The balance of the materials which were
19 neither in the category of being classified nor which
20 implicated any privileges, it occurred to me, it was
21 my view that the investigative authorities ought to
22 be able to handle.

18

1 But in 17 years of practicing law, I had
2 never heard of simply turning over a room full of
3 documents without having somebody who represented the
4 client in question undertake a review of the
5 materials, so that there was some knowledge of what
6 was there.

7 My conviction that that was the
8 appropriate way to proceed was exponentially, my
9 feeling about it was exponentially greater in this
10 circumstance where, as I say, there might have been
11 sensitive national security materials in the man's
12 office, and I thought it was inexcusable to, in that
13 circumstance, not have somebody undertake to
14 determine whether such materials were there before
15 giving anyone access to them.

16 Q Did Mr. Nussbaum indicate to you that what
17 the police were searching for was a suicide note or
18 an indication of mental state or an extortion demand?

19 A I don't have any recollection of being
20 specifically so advised. However, it was, I think it
21 was commonly understood in this conversation that
22 that's what they would be looking for.

1 Q Was Mr. Nussbaum's view that considering
2 the interests of the Park Police and what they were
3 looking for, coupled with not further delaying
4 counsel's responsiveness to their request that a
5 procedure could be fashioned balancing the interests
6 involved whereby he could review the materials in
7 their presence, looking specifically for the types of
8 documents that they were interested in.

9 Is that correct?

10 A Right.

11 And, again, I didn't object to that on the
12 grounds that that would also subject to exposure
13 materials which shouldn't be subject to exposure. My
14 reaction to that was that in all likelihood, the
15 investigative authorities wouldn't find it an
16 acceptable way of proceeding.

17 Q How long do you think that meeting lasted?

18 A The discussion between me and?

19 Q Yes.

20 A Again, my best recollection at this point
21 is that it was about 20 minutes long.

22 Q Did you have any further contact on this

1 issue?

2 A With Bernie?

3 Q Yes.

4 A I have a recollection that at some point
5 subsequently, we had a hallway conversation during
6 which he told me it all worked out fine, and that I
7 needn't have been concerned, and that I shouldn't be
8 worried. It worked out just fine.

9 Q How long was that after the initial
10 conversation as best you can recall?

11 A I don't recall, but I think it would have
12 been in the next day or two.

13 Q I take it it is your testimony that you
14 have no specific recollection of a position advocated
15 by any of the other participants in the meeting?

16 A I do not.

17 MR. BEN-VENISTE: I have nothing further.

18 MR. COMEY: I have a few.

19 EXAMINATION

20 BY MR. COMEY:

21 Q Mr. Quinn, as Mr. Ben-Veniste said, I'm
22 Jim Comey, Deputy Special Counsel on the majority

1 side.

2 I have just a few questions.

3 Do you know why it was that Mr. McLarty
4 contacted you in connection with this issue?

5 A Let me pick up the following contact
6 meeting in that sense.

7 I was a regular participant in Mr.
8 McLarty's early morning senior staff meeting, and it
9 is my best recollection that the conversation in
10 question took place as one of those meetings was
11 breaking up, and we were kind of walking out the
12 door.

13 And he asked me if I'd check in with
14 Bernie and just counsel with him on how this was
15 being handled.

16 Q I don't know exactly how to form the
17 question. I don't know enough about your background
18 --

19 A Why did he ask me?

20 Q Exactly.

21 Is there some reason that he picked you?
22 Because you happened to be there?

22

1 A I think he had a positive impression of my
2 abilities, frankly. It was not unusual for McLarty
3 to have asked me to take on special assignments.
4 This had happened on other matters.

5 Q Prior to having the meeting that you
6 described with Mr. Nussbaum and others, did you
7 consult with anyone else, or do any kind of
8 preparation work on your own, research and things of
9 that sort?

10 A I have no recollection of consulting with
11 anyone else. I have no doubt that I did no research.

12 Q At the meeting, what is your best
13 recollection, what was your understanding, when the
14 meeting began --

15 Strike that.

16 We talked about the Park Police. Did you
17 have an understanding that other branches of the
18 Government involved in investigations were to be
19 involved with the Park Police, or did you understand
20 Mr. Nussbaum to be talking about the Park Police
21 investigators only?

22 A My memory at this point is limited to the

1 Park Police. It's quite possible that I was made
2 aware that there were other agencies involved in the
3 intended search of the office, but I don't have a
4 clear recollection of that at this point.

5 Q Do you have any recollection of Mr.
6 Nussbaum mentioning to you conversations he had had
7 with Department of Justice officials prior to your
8 meeting about the terms under which any review of Mr.
9 Foster's office would be conducted?

10 A I do not.

11 Q When the meeting broke up, the 20-minute-
12 or-so meeting that you've been talking about, what
13 was your understanding as to what plan Mr. Nussbaum
14 was leaving that meeting with? What was the final
15 line?

16 A It was my clear impression when he left
17 that he intended to invite one or more investigators
18 into the office, and that he, Bernie, would conduct
19 the review of the documents or files in the office.
20 That he would review them and provide an oral
21 description to the others in the room as to what
22 might be there.

1 Q By others in the room, you understood that
2 to be Park Police investigators?

3 A That's my present memory.

4 Q During the course of your discussion with
5 Mr. Nussbaum, did you suggest that an inventory be
6 taken or a written inventory be made of the contents
7 of the office?

8 A Not as such.

9 Again, I thought that the most important
10 thing in this regard that should be done was to
11 ascertain whether there were in fact materials that
12 were of either a classified or privileged nature.
13 Because of course, if neither the national security
14 nor any privileges were implicated, then my concerns
15 would have disappeared.

16 In the event, however, that they were
17 implicated, then I thought it would be appropriate to
18 know that and then make a judgment as to how best to
19 proceed.

20 Q You spoke earlier about your concern about
21 having people appropriate to the privileges that
22 might lie within the office review the documents at

1 the outset, is that right?

2 A Right.

3 Q In terms of attorney-client privilege,
4 who, in your view, if you had one at that time, would
5 have been an appropriate person or persons to make a
6 review and look at documents that might be subject to
7 a personal attorney-client privilege?

8 A Any of the senior people in the Counsel's
9 Office including Mr. Nussbaum himself.

10 Q And with respect to Executive privilege,
11 would that be the same?

12 A Presumably.

13 Q And as to national security information,
14 would it be fair to say, in your view, it would be
15 someone with sufficient security clearance to look at
16 whatever different levels of security information
17 might be contained in the office?

18 A Yes.

19 Q Was there any discussion during your
20 meeting about getting independent counsel of some
21 sort to make the review?

22 A I have no recollection that there was any

1 such discussion.

2 Q Was there any discussion that you recall
3 of involving --

4 A May I?

5 Q I'm sorry.

6 A I feel compelled to add to this.

7 At that point in time, neither nor I think
8 anyone else had any hesitation about the search being
9 undertaken by people in the Counsel's Office. There
10 was no reason to think there would be a need for
11 people from outside the office.

12 And, again, my principal focus, frankly,
13 was on the possibility that there might be classified
14 materials in there, and that was not something that
15 we require. Indeed, it would suggest that bringing
16 in an independent counsel or someone of that nature
17 would be inappropriate.

18 What we really needed here was somebody
19 with the proper security clearances.

20 Q I take it from your answer, then, that
21 there was no discussion of involving lawyers from the
22 Justice Department or the Office of Legal Counsel

1 within the Justice Department in that review?

2 A I frankly don't recall now that we ever
3 got to that level of specificity. That's not to say
4 that, I'm not saying that we didn't discuss those
5 possibilities. I have no recollection of them.

6 Q After the meeting that you described with
7 Mr. Nussbaum and others, and as I understood your
8 testimony, you only recall speaking with Mr. Nussbaum
9 during that session?

10 A That's right.

11 Q After that meeting, you described a
12 hallway contact with Mr. Nussbaum.

13 Did you speak to anyone else about this
14 subject after that meeting?

15 A I don't recall. And specifically whether
16 I had any subsequent conversation with anyone else
17 who might have been in that room, I don't recall.
18 It's not out of the question that I would have had a
19 similar hallway conversation with Neuwirth or Burton.
20 I know I had no significant discussion with anyone
21 else. And I have no recollection of having had any
22 subsequent discussion with them.

1 Q I take it from the comments you made about
2 your reaction, based on a career spent as an
3 attorney, that in your view, an appropriate procedure
4 would have involved a review of the office and a
5 segregation of privileged material or national
6 security material.

7 Do I understand that right?

8 A That's correct.

9 Q Is it also your view that an appropriate
10 procedure would have involved, as a private law firm
11 might do, creating a log of the privileged material
12 so that that could be discussed with the
13 investigators without having to show them the
14 material?

15 A That would have certainly been within the
16 scope of the suggestion I was making, but again, I
17 think preliminarily I wanted to make sure that
18 someone in an appropriate capacity made an initial
19 cut whether these issues were even on the table, that
20 is to say whether or not there were classified
21 materials or whether there were privileged materials
22 present in the office.

1 I assumed, by the way, that there were.

2 Q Did the discussion get so detailed as to
3 lead to you suggesting, once they're segregated, if
4 there are such materials, once they're segregated,
5 here's how you should handle them?

6 A It may have, but I don't specifically
7 recall.

8 Q So you don't recall having a discussion of
9 you should make a listing of what files you're
10 separating or what documents you're separating?

11 A I don't have a specific recollection of
12 that but in the event that there were such a
13 segregation, I feel confident saying it would have
14 been my expectation that there would have been the
15 kind of logging or identification procedure that you
16 describe.

17 Q With respect to documents that might be
18 subject to an attorney-client privilege of a personal
19 nature, and by that, I mean that deal with matters
20 relating to the First Lady or the President
21 unconnected to governmental functions, banking
22 records or personal financial records, is it your

1 understanding that there was someone in the White
2 House Counsel's office besides Mr. Foster who would
3 enjoy, could maintain the privilege in looking at
4 those documents?

5 A I would be speculating because it's not my
6 impression at the time that that issue would have
7 been of concern. I was not aware personally of the
8 matters on which Mr. Foster worked, for the most
9 part, so I couldn't be sure whether such materials
10 would have been.

11 Q Was there any discussion during your
12 meeting as to whether those kind of documents,
13 personal documents, might be present?

14 A I don't recall. I don't recall.

15 MR. COMEY: That's it, having been shown
16 the pink note. I have nothing further.

17 MR. BEN-VENISTE: Let me just ask you one
18 or two clarifying questions, Mr. Quinn.

19 FURTHER EXAMINATION

20 BY MR. BEN-VENISTE:

21 Q With respect to the materials in Mr.
22 Foster's office, is it fair to say that you didn't

1 know what the volume was and you didn't know what the
2 nature was of specific items in his office?

3 A Yes. I mean, for the most part, that
4 would certainly be true.

5 Q With respect to the materials that would
6 likely be found in the Deputy Counsel's office, would
7 it be reasonable that you, on July 22nd, 1993, had
8 reason to believe there would be a substantial amount
9 of documents falling either under Executive
10 privilege, attorney-client privilege, or national
11 security?

12 A It was certainly my assumption that there
13 was a significant likelihood that materials falling
14 in at least one of those categories would be present
15 in his office.

16 Q And in connection to the issue of whether
17 there might be private documents relating to the
18 First Family, whether in that office, for purposes of
19 performing some official duty, such as filling out
20 financial disclosure forms or preparing them for the
21 signature of the President or for other official
22 purposes, if you had given thought to the issue of

1 what would be done with those materials, given the
2 way such materials are handled in circumstances where
3 a private lawyer has such materials in his office, do
4 you know how they would be disposed of?

5 Let me interrupt myself.

6 Who owns such documents, the client or the
7 lawyer?

8 A The client.

9 Q Would it be your expectation, in an
10 ordinary civil circumstance, that such files relating
11 to confidential personal matters of a client would be
12 returned to the client or subject to the disposition
13 of that client?

14 A Absolutely.

15 Q Did you have any reason to believe that
16 had such materials been in the office, they wouldn't
17 be so treated?

18 A I'm sorry, will you restate that.

19 Q Did you give thought to that issue beyond
20 the fact that Mr. Nussbaum would be capable of making
21 a determination of which would be private, which
22 would be covered by Executive privilege and which

1 would be national security?

2 A I don't recall having given specific
3 thought to that issue.

4 Again, I was not, I had an understanding
5 of some of the issues on which Mr. Foster worked,
6 though far from a complete sense of the issues on
7 which he worked.

8 My focus again was on initially making
9 sure that someone in an appropriate role, I felt that
10 was in the purview of the counsel, himself, should
11 undertake to ascertain whether any of these issues
12 were problematic, as I assumed they probably would
13 be.

14 Q Problematic in terms of showing them to
15 outsiders, waiving privileges?

16 A That's right.

17 Q And the like.

18 So, to sum this up, Mr. Nussbaum was
19 providing what he believed to be a practical solution
20 to the problem whereby, given the nature of the
21 material the police were looking for and the time
22 constraints involved, that he could satisfy both the

1 interests that you raised and the legitimate issues
2 of law enforcement officials by following the
3 procedure that he outlined?

4 A That appears now and appeared then to have
5 been his argument.

6 MR. BEN-VENISTE: I have nothing further.

7 FURTHER EXAMINATION

8 BY MR. COMEY:

9 Q Did Mr. Nussbaum tell you what kind of
10 materials the Park Police were looking for?

11 A I don't have any recollection of being
12 specifically told what they were looking for but it
13 is my impression now that everyone involved in this
14 conversation understood that they were looking for
15 materials which might shed light on why Vince took
16 his own life.

17 Q I take it from your answer, that was an
18 unexpressed understanding, something that wasn't
19 discussed at the meeting as to what are they looking
20 for?

21 A I have no recollection of discussing at
22 that meeting or any other time what might they be

1 looking for. I think the understanding at that time
2 was they were looking for anything that might shed
3 light on why Vince committed suicide.

4 Q One last question I forgot to ask you.

5 What if any difference would it have made
6 in your view of the situation -- I'm asking you to
7 assume a hypothetical -- if Mr. Nussbaum had told you
8 that people who would be looking at the documents are
9 senior Justice Department people with sufficient
10 security clearances?

11 A I don't know. I hesitate to speculate
12 about it. It wouldn't have resolved the privilege
13 issues.

14 MR. COMEY: Okay, thanks.

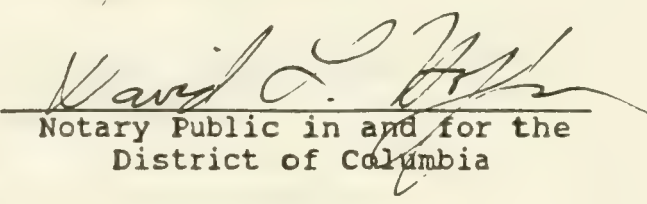
15 (Whereupon, at 12:05 p.m., Friday,
16 July 14, 1995, the taking of the deposition ceased.)
17

18 -----
19 JACK QUINN
20
21
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

36

I, David L. Hoffman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
District of Columbia

My Commission Expires 6/30/00

DEPONENT JACK QUINN

ERRATA

[illegible]

**DEPOSITION OF DIANN WALTERS
IN RE: S. RES. 120**

FRIDAY, JULY 14, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

Deposition of DIANN WALTERS, called for examination pursuant to notice of deposition, at 3:15 p.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

**ROBERT J. GIUFFRA, JR., Esq.
Majority Chief Counsel
ALICE S. FISHER, Esq.
Majority Deputy Special Counsel
LANCE COLE, Esq.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.**

ALSO PRESENT: VINCENZO A. DELEO

CONTENTS

| WITNESS | EXAMINATION |
|---------------------|-------------|
| Diann Walters | |
| by Ms. Fisher | 3 |
| by Mr. Cole | 52 |
| by Ms. Fisher | 78 |
| by Mr. Cole | 82 |

EXHIBITS

| DEPOSITION NUMBER | IDENTIFIED |
|-------------------------|------------|
| Diann Walters | |
| Walters Exhibit 1 | 13, 4421 |
| Walters Exhibit 2 | 36, 4422 |

1 PROCEEDINGS

2 Whereupon,

3 DIANN WALTERS

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MS. FISHER:

8 Q Hi, Ms. Walters. As I told you, I'm Alice
9 Fisher and I'm Associate Special Counsel to the
10 Special Committee to investigate Whitewater
11 Development Corporation and related matters. To my
12 left is Bob Giuffra who also works for the Special
13 Committee -- he's chief counsel to the Banking
14 Committee, excuse me, and for the majority staff.
15 And to his left is Lance Cole for the Special
16 Committee minority staff and behind me is Vincenzo
17 DeLeo.

18 This deposition, as you may know, is being
19 conducted pursuant to Senate Resolution 120 which
20 establishes a Special Committee administered by the
21 Banking Committee to conduct an investigation
22 involving Whitewater Development Corporation, Madison

4

1 Guaranty Savings & Loan, Capital Management Services,
2 the Arkansas Development Finance Authority and other
3 related matters.

4 Section 1.B.1 of the resolution authorizes
5 an investigation and public hearings into whether
6 improper conduct occurred regarding the way in which
7 White House officials handled documents in the office
8 of White House Deputy Counsel Vincent Foster
9 following his death. And that's going to be the
10 focus of today's deposition.

11 I'm going to ask you a series of
12 questions. The court reporter is going to take down
13 the questions and your answers to those questions.
14 You're going to be testifying under oath. If you
15 don't understand any of my questions, please just let
16 me know. I don't mean to be misleading. I want to
17 make them as clear as possible for you, so if you
18 have a problem with that, just let me know and I'll
19 try to rephrase it.

20 The stenographer is going to prepare a
21 record of the deposition and it will be treated as
22 confidential until the commencement of the hearings

1 which are going to begin next Tuesday, on July 18th.
2 And at that point or some later point they may be
3 made public and part of a record.

4 Ms. Hewitt may have told you that you may
5 be represented by counsel here today, but I see that
6 you're not; and that's fine with you?

7 A Uh-huh.

8 Q After the deposition transcript is taken
9 and completed, you'll have an opportunity to come in
10 and read it over, and review it, and make any
11 corrections based on anything that you believe was
12 transcribed wrong at that point.

13 Do you have any questions before we begin?

14 A No.

15 Q Do you want to state your name for the
16 record?

17 A Diann Walters.

18
19
20 Q And your present business address?

21 A I think it's 1600, I think Pennsylvania
22 Avenue.

1 Q And your present position there?

2 A Custodial worker.

3 Q How long have you been employed by the
4 White House?

5 A It will be three years next month.

6 Q And have you done the same duties, had the
7 same title since you started --

8 A Cleaning, uh-huh.

9 Q So you were there on July 20, 1993?

10 A Yes.

11 Q Can you tell me something about your
12 general duties at the White House?

13 A Pull trash, vacuum, dust. That's about it.

14 Q Is there a particular part of the White
15 House that you work in?

16 A I used to work in the west wing, but now I
17 work in the east wing.

18 Q When did that change?

19 A I don't know the exact date. It's been --
20 I don't know the exact date.

21 Q Approximately a year ago, two years?

22 A No, it ain't been that long. It's been

1 less than a year.

2 Q What kind of procedures were established
3 for cleaning the west wing offices?

4 A I don't understand what you're saying.

5 Q Were there certain floors that you would
6 clean?

7 A I had my own addition, I had the second
8 floor. I had the second floor.

9 Q Did you clean any other floors?

10 A Yeah, like if we're short, somebody would
11 come in. They can pull you.

12 Q Was it the same people that cleaned the
13 second floor routinely or did it switch week to week?

14 A No, because I always had the second floor.
15 If I ain't come in, they might put somebody else up
16 there, if I was flipping with somebody else up there.

17 Q Who else generally worked with you on the
18 second floor during that time period surrounding July
19 of 1993?

20 A Okay. Terry -- there were two lockups.
21 Ms. Cobey, she does the bathroom but she helped me
22 during the lockup.

1 Q What's a lockup?

2 A The Secret Service has to escort you in
3 there.

4 Q So that's an office that has an alarm
5 system or lock on the door?

6 A Yeah, lock on the door. You can't go in
7 unless you have Secret Service.

8 Q Why don't you give me an idea of what rooms
9 are on the second floor or what office suites and
10 what bathrooms?

11 A I don't know the name of the office, but I
12 know -- the small locker was the First Lady's office
13 and I don't know -- there's a small and a big one.
14 There was just two.

15 Q A small one and a big one within the First
16 Lady's office?

17 A Side by side. You first get off the
18 elevator and the big lockup is the first one to your
19 right.

20 Q And that's the First Lady's office?

21 A No, that's the big one. I don't know the
22 name of that one. The small one is the First Lady's

1 office.

2 Q And that's -- so if you're coming up the
3 elevator to the left --

4 A To your right.

5 Q To your right?

6 A When you get off the elevator the room is
7 directly to your right, the big one.

8 Q Is this when you're -- is this when you're
9 facing out towards Pennsylvania Avenue, is that where
10 the elevator faces when you come up or does it face
11 the Ellipse?

12 A When you go out the building, it's a
13 parking lot, you know.

14 Q So do you believe -- what other floors are
15 on the -- what other rooms, other than the big lockup
16 office to the right and then the First Lady's office
17 that's also a lockup office, that are on that second
18 floor area that you and Terry were cleaning?

19 A Besides the lockups?

20 Q Yes.

21 A It's just a big office. When you get off
22 the elevator, you go straight back. You'll see

10

1 rooms, you know, different rooms.

2 Q Can you just draw me a sketch of this, not
3 artistic. I think it may facilitate things just a
4 little bit.

5 A I don't know how to do this. Okay. This
6 is the elevator right here, and when you get off the
7 elevator to your right -- to your right that's the
8 big lockup. That's the big lockup and right next
9 door to it is a small one, and straight down this way
10 you'll see over this way, right here, this men's
11 bathroom and then you have like a little wall and a
12 women's bathroom. And back this way, you'll see
13 rooms back down that way.

14 Q But those aren't locked rooms?

15 A No.

16 Q Did you have any responsibility for
17 cleaning these rooms back here?

18 A What you mean --

19 Q The ones that weren't locked.

20 A No, I don't understand what you're saying.

21 Q Did you go in and pull trash and vacuum in
22 these rooms back here as well?

1 A Right.

2 Q How many rooms are back here?

3 A It's about one, two, three -- there's four
4 rooms with doors and it's got, in the open areas,
5 like desks and stuff.

6 Q Like cubbyholes?

7 A Right, like you see different desks and
8 stuff, but there's four rooms -- four doors besides
9 that that open it.

10 Q So there's four doors back here that open
11 up into a room with maybe some cubbyholes?

12 A Right. Like the open area -- like they got
13 the doors -- you know, say, if you go straight back
14 this way, back up this way, you'll see like a room, a
15 small room. Then between, back through this area
16 here is another door sitting back up in here and this
17 one's almost directly across from this one right here
18 and up here and little desks in between.

19 Q And is there any other area that you had
20 responsibility for?

21 A They're on another side on the second
22 floor. When you get off the elevator, you go to make

1 a left and then go down the hallway and there's rooms
2 to your right and there's rooms to your left.

3 Q And that would be down this area down here?

4 A No. When you get off the elevator, you go
5 to your left.

6 Q It would be down over here?

7 A Right. You walk down the hall.

8 Q And there's an office -- can you just draw
9 that, where the offices are over there?

10 A When you go down the hallway, the elevator,
11 you get off, you go down the hallway. Then you make
12 a right and there's another hallway and there's rooms
13 up in that area. Then you go down the hall. There's
14 rooms on the other side.

15 Q And you're responsible for cleaning in that
16 area?

17 A Yeah, the whole second floor was mine.

18 Q Were there any other area where there
19 were rooms?

20 A No.

21 Q Was there any other elevator?

22 A No, that's the only elevator.

1 Q Where are the stairs?

2 A When you get off the elevator, the steps
3 are about a little ways right here, close to the
4 elevator.

5 Q Could you just put an X where the stairs
6 are?

7 A About right here, I guess. I mean, this
8 way.

9 Q Are there any other stairs on the floor
10 anywhere, either over here or over here somewhere?

11 A No.

12 Q So the only two ways to get onto this
13 second floor, to this area, to get to these
14 offices -- excuse me. I'm not phrasing it quite
15 correctly -- is to take the elevator or the stairs?

16 A Right.

17 Q And those are the only other -- there
18 aren't any fire exits or anything like that?

19 A Huh-uh.

20 MS. FISHER: Can I have this marked as
21 Deposition Exhibit 1.

22 (Walters Exhibit 1 identified.)

1 BY MS. FISHER:

2 Q Back in July of 1993, what hours did you
3 work? What were your shifts, the same as they are
4 now?

5 A Uh-huh, it's the same.

6 Q And that is, for the record?

7 A 9:30 to 6:00 in the morning. We're
8 supposed to be 6:00 but we leave at quarter to 6:00.

9 Q You leave at 5:45 a.m.?

10 A Right.

11 Q Did Ms. Cobey have the same hours back
12 then?

13 A Uh-huh.

14 Q You started together and worked your way
15 around?

16 A Uh-huh.

17 Q And what days of the week?

18 A We just -- we used to be -- we used to be
19 off -- we had to work weekends but now we're off
20 every weekend.

21 Q How about in July of 1993, do you recall
22 what days of the week you worked?

1 A We used to rotate areas. I think it was
2 Friday, Saturday and switch over to Sunday, Monday;
3 like rotate every three months, I think.

4 Q Did you work Monday night -- every Monday
5 night through every Friday night?

6 A No, because like I said, the shift
7 rotated. Sometimes I'd be off on Sunday and Monday,
8 sometimes I'd be off on Friday or Saturday.

9 Q Were you ever off on a Tuesday, Wednesday
10 or Thursday?

11 A No.

12 Q During July of 1993 you worked on every
13 Tuesday, Wednesday and Thursday?

14 A Yes.

15 Q And you wouldn't recall whether there were
16 certain Saturdays or certain Sundays or certain
17 Mondays that you were off during July of 1993 or
18 would you?

19 A Huh-uh.

20 Q You didn't work every day of the week?

21 A I mean, you know -- we used to work like 10
22 days straight, too, rotate like that.

1 Q You would work 10 days straight in that
2 time frame?

3 A We would work 10 days straight and the next
4 time we'd rotate, we'd be off four days.

5 Q So maybe on for 10, off for four?

6 A Uh-huh.

7 Q Do you recall any regularity in whether you
8 worked seven days straight or eight days straight or
9 10 days straight back in July of 1993?

10 A I worked 10 days straight. Sometimes I
11 didn't work the whole 10 days, I'd take off.

12 Q But you always worked on Tuesday, Wednesday
13 and Thursday night?

14 A Uh-huh.

15 Q And Ms. Cobey as well, she had your same
16 schedule?

17 A Yes -- I don't know. I don't know. I
18 can't say for sure.

19 Q If she wasn't working with you, was there
20 another particular person that would have been
21 working with you regularly back in July of 1993?

22 A No, because most of the time she's off,

1 helping me do the lockup. Her assignment was the
2 bathrooms if they had bathrooms on the floor, and
3 she'd help with the lockup.

4 Q Did you clean the lockup offices back in
5 July of 1993?

6 A Uh-huh.

7 Q Could you tell me the procedure for getting
8 in and out of the offices back in July of 1993, the
9 lockup offices?

10 A I don't understand what you mean.

11 Q How would you get into the office?

12 A We had to wait until the Secret Service
13 come up there and let us in.

14 Q Would you go up to the office and then call
15 for the Secret Service?

16 A No, because I'd already be up there. Most
17 of the time, I'd go up there and start pulling my
18 other trash and wait for him to come up there. He
19 used to get up there before -- it would be before
20 11:00 because I think the roll call is over at 10:30.

21 Q What's roll call?

22 A You know, where all of them got to go to

1 get their assignments at.

2 Q Meaning the Secret Service would start
3 their shift at 10:30, change a shift at 10:30?

4 A Well, as far as I know, I just know that
5 they go there and they get their assignment where
6 they're going to work. See, if my regular escort
7 wasn't there, I have another different person because
8 usually I have a regular escort.

9 Q Do you know who your regular escort was at
10 the time in July of 1993?

11 A The regular one is Ridge. I don't know his
12 last name. Ridge.

13 Q Like Reggie?

14 A Ridge.

15 Q How do you spell that?

16 A I believe it's R-i-d-g-e, or Rich.

17 Q Was there anyone else that was escorting
18 you?

19 A Hank O'Neill was escorting that night.

20 Q The night of July 20, 1993?

21 A Yeah, he was escorting.

22 Q And that wasn't his normal shift to do that

1 for you?
2 A No.
3 Q This was just his assignment for the
4 evening?
5 A Yes, because I believe Ridge wasn't there.
6 That's why he had it. They give it to different
7 people if the regular person wasn't there.
8 Q Would you describe what Mr. O'Neill looks
9 like.
10 A He's short and chubby like.
11 Q Anything else about what kind of -- what
12 color he has?
13 A I don't know what color he has.
14 Q Or anything else about him? Did he have a
15 name tag on?
16 A Yeah, uh-huh.
17 Q Did you know him well?
18 A Oh, you know -- I didn't really -- no, just
19 from the time I was there. I didn't know none of
20 them that well.
21 Q How long had you known who Mr. O'Neill was
22 as of July 20, 1993? How many times previously would

1 you say you had spoken to him or saw him?
2 A I mean, you know, I used to see him a lot,
3 even though if he wasn't escorting, I would see him a
4 lot. I don't know how many times.
5 Q More than 20 times?
6 A During what time?
7 Q Prior to July of 1993, would you have seen
8 him -- had an occasion to see him more than 20 times?
9 A On the same day?
10 Q No, no, since you had started work at the
11 White House up until July.
12 A Oh, yeah.
13 Q I believe you testified you came on to work
14 at 9:30 p.m. Do you recall that you came to work at
15 9:30 p.m. on July 20, 1993?
16 A Uh-huh.
17 Q When you arrived at the White House for
18 work, where did you go?
19 A We had to go -- we had to go in the old
20 building to turn our carts and stuff, Old Executive
21 Building and turn our carts. And by the time we get
22 over there, it would be going on 10:00, you know.

1 Q About 10:00 p.m. you would have arrived at
2 the White House?

3 A Yeah, it would be before 10:00, you know.

4 Q And would you go directly to the second
5 floor?

6 A Uh-huh.

7 Q Would you do anything before you went to
8 the second floor?

9 A I had to get my vacuum cleaner, sometimes
10 we chat a little bit.

11 Q Where was that located?

12 A When you first come in the ground floor, it
13 would have two sets of double doors and we go through
14 two sets of double doors and in a hole about this
15 much -- it's right by the elevator -- when you turn
16 and come in the double doors, the elevator is right
17 there to your left and there's a storage closet, we
18 have carts and vacuum cleaners in there.

19 Q Do you recall whether you went to get your
20 vacuum cleaner that night July 20, 1993?

21 A I don't remember.

22 Q Did you do that every night? Did you

1 vacuum every night?

2 A Yeah, I vacuum every night but sometimes I
3 go upstairs. It would all depend.

4 Q Once you got to the second floor, what
5 would you do then?

6 A Pull trash.

7 Q Out of the unlocked rooms?

8 A Uh-huh.

9 Q And about how many rooms is that?

10 A Four rooms with the doors -- all together?

11 Q Uh-huh.

12 A On the whole floor?

13 Q Approximately.

14 A Including all the desks and open areas?

15 Q Yes. Just an approximation would be fine.

16 A I guess about 20.

17 Q Approximately how long would it take you to
18 pull trash from the unlocked rooms?

19 A No more than about 15, 20 minutes.

20 Q And then what would be the next thing that
21 you would do?

22 A Sometimes I'd go ahead and start dusting

1 before the escort would get up there or sometimes I'd
2 wait.

3 Q Do you recall what you did on the night of
4 July 20, 1993?

5 A You're talking about when I first started?

6 Q Yes.

7 A No.

8 Q Whether you waited or whether you dusted.

9 A No.

10 Q Generally, what would you do after you
11 started dusting? If you decided to dust before your
12 escort came out there, would you dust all the 20
13 rooms, approximately 20 rooms?

14 A No, I try to dust what I can. Mostly, I
15 start on the same side where the lockups at, in that
16 area right there.

17 Q Did you generally call up for the Secret
18 Service escort?

19 A Huh-uh. They know.

20 Q So they would just come up to the second
21 floor and find you?

22 A Right.

1 Q And say what?

2 A They don't say nothing. Where you are at,
3 you can see them.

4 Q Generally, that was about what time?

5 A Are you talking about when they come up?

6 Q Yes.

7 A It would be before 11:00, sometimes 25 of,
8 maybe quarter of.

9 Q Some time approximately between 10:30 and
10 11:00?

11 A Right.

12 Q Would it ever be earlier than 10:30?

13 A No.

14 Q Do you recall what time it was on July 20,
15 1993 when the Secret Service escort came upstairs to
16 the second floor?

17 A Huh-uh.

18 Q What would happen then?

19 A When they come up?

20 Q Uh-huh.

21 A They open the lockup, mostly one at a time.

22 Q Which one first?

1 A Sometimes either one, you know. Sometime
2 they open the big one, sometimes the small one.

3 Q Do you know whether the big lockup room
4 which you have referred to previously is the White
5 House counsel's suite of offices?

6 A I don't understand what you're saying.

7 Q The White House attorneys, would that be
8 their offices?

9 A I don't know.

10 Q The big lockup room which you've referred
11 to?

12 A I don't know.

13 Q Do you recall anyone in particular who had
14 an office in that --

15 A As far as knowing anybody?

16 Q Yes.

17 A Huh-uh, because most of the time you go up
18 there, they don't be in there anyway. Most of the
19 time, you might see the door, but we're not supposed
20 to go in there anyway unless the Secret Service was
21 there.

22 Q Unless the Secret Service agent escorts you

1 in?

2 A Right.

3 Q Would the Secret Service agents ever escort
4 you in if no one was there -- I mean, if someone was
5 in the offices?

6 A No, huh-uh.

7 Q Do you recall ever meeting anyone at any
8 time prior to July 20, 1993 from that suite of
9 offices?

10 A Huh-uh.

11 Q Do you know a gentleman by the name of
12 Bernard Nussbaum?

13 A Huh-uh.

14 Q Do you know a woman by the name of Margaret
15 Williams, Maggie Williams? Evelyn Lieberman --

16 MR. GIUFFRA: You should say yes or no.

17 THE WITNESS: Oh, okay. No.

18 BY MS. FISHER:

19 Q Would you know a woman by the name of
20 Cheryl Mills?

21 A No.

22 Q Would you know a woman by the name of Patsy

- 1 Thomasson?
2 A No.
3 Q Would you know a gentleman by the name of
4 Howard Pastor?
5 A No.
6 Q After the Secret Service agent unlocked the
7 suite of offices, what would you do generally?
8 A After they opened them up?
9 Q Yes.
10 A Pull trash.
11 Q How long would that take?
12 A I'd say about five minutes, seven minutes,
13 but that small lockup doesn't take that long because
14 it's small.
15 Q The First Lady's lockup?
16 A Uh-huh.
17 Q And how long would that take, if you were
18 in the First Lady's lockup, how long would it take
19 for you to pull the trash?
20 A Less than five minutes.
21 Q What would you do next in the big lockup
22 room?
-

- 1 A Dust, do the glass top. They have glass
2 tops.
3 Q How long would that take generally?
4 A Well, it all depends. Sometimes, if you
5 have -- like if you do a thorough in there, almost 45
6 minutes. If not, about 20 minutes, you know.
7 Q What other activity, cleaning activity
8 would you do in the big lockup office?
9 A Dust and clean the glass tops, dusting and
10 vacuum and trash.
11 Q Would you vacuum every night?
12 A Yes.
13 Q Directing your attention to the big lockup
14 room, could you describe the layout of that room for
15 me?
16 A When you first go in the door --
17 Q You could draw it again as well. Here, let
18 me give you a new piece of paper. If you could show
19 me where the offices are in that room.
20 A You first -- this door here, it's about --
21 this is the carpet going this way and they have -- I
22 think it was four or six desks -- I'd say if there

1 are two desks on this side right here, there are two
2 desks on this side right here. Then there's a
3 door -- this is a door and you're going back this
4 way.

5 That's where there's a lockup -- I mean,
6 not a lockup but a room -- if you go this way, there
7 are two rooms, like one right here and this one,
8 almost side by side right here, and that's all.

9 Q Those are rooms?

10 A Right.

11 Q And these are desks?

12 A Yeah, these are the desks, and this is just
13 like the carpet right here and two desks on this side
14 and two desks on that side.

15 Q Are there any other rooms in that suite?

16 A That's all.

17 Q Would you put an X in the two boxes where
18 there are rooms?

19 A Because these are the ones with doors here.

20 Q And were those doors -- did they have locks
21 on them?

22 A They don't be locked -- I guess they do

30

1 have locks on them but they don't have to be locked.

2 Q They were never locked?

3 A Huh-uh.

4 Q Was one room bigger than the other?

5 A Yes.

6 Q Which one was bigger?

7 A Pick this one here. This one was the
8 biggest.

9 Q But neither the big one nor the little room
10 were ever locked?

11 A Huh-uh.

12 Q Directing your attention to the smaller
13 office, the smaller room which you've pointed out
14 with the X, do you recall whether in July of 1993
15 that room had a burn bag?

16 A Yeah. All of them have burn bags.

17 Q Do you recall whether in July of 1993 the
18 person who occupied that office used the burn bag
19 regularly?

20 A I don't remember.

21 Q Do you recall that a gentleman by the name
22 of Vincent Foster occupied that office?

1 A Yes, just hearing of it, uh-huh.

2 Q And do you recall ever meeting Mr. Foster?

3 A No.

4 Q Do you recall the events which occurred on
5 July 20, 1993, the evening that Mr. Foster's body was
6 found?

7 A What you mean?

8 Q Do you recall working in the suite of
9 offices --

10 A Right.

11 Q -- on July 20, 1993?

12 A Uh-huh.

13 Q Do you recall anything unusual about that
14 evening?

15 A Huh-uh.

16 Q Do you recall anyone being in the suite of
17 offices on July 20, 1993?

18 A No.

19 Q Do you recall anyone coming into the suite
20 of offices while you were working --

21 A No.

22 Q -- on July 20, 1993?

1 A But I saw -- I don't know if the lady was
2 in -- I saw this one lady, but she had like long
3 hair. I don't know if it's blonde or whatever.
4 That's the only person I saw. I don't know if she
5 was in the office, but I know she said something
6 about the bag or something, the trash or something.

7 Q Where was that conversation?

8 A She was telling us -- Terry -- Ms. Cobey
9 had pulled that office right there and I had already
10 pulled the rest of the trash, and we had a trash --
11 the trash was already -- we had already set the trash
12 in -- pulled the trash and put it in a big brown
13 plastic bag and set it in the hallway. That's all I
14 remember.

15 Q What hallway?

16 A Right by the elevator, right by the
17 elevator.

18 Q On the second floor?

19 A Uh-huh.

20 Q And where were you when you had this
21 conversation with this woman with the long blonde
22 hair?

1 A I'm not sure.
2 Q Were you still cleaning the offices?
3 A No.
4 Q Was it blonde hair or brown hair?
5 A I'm not sure what color it was, but it was
6 like long.
7 Q Was it straight?
8 A Like stringy.
9 Q Was she tall or short?
10 A Kind of -- well, I guess my height and kind
11 of -- she wasn't fat. Slim like.
12 Q Thin?
13 A Yeah.
14 Q About 5'4?
15 A I'm 5'6.
16 Q And you believe she was about your height?
17 A Yeah, yeah, something like that.
18 Q Do you recall whether her hair was straight
19 or curly?
20 A Straight.
21 Q Do you recall anything else distinguishing
22 about her?

1 A Huh-uh.
2 Q Do you recall what she was wearing?
3 A No.
4 Q Do you recall whether she was in casual
5 clothes or work clothes?
6 A No.
7 Q Do you recall whether she was with anyone?
8 A Huh-uh.
9 Q Do you recall overhearing her have a
10 conversation with anyone else?
11 A No.
12 Q Was Ms. Cobey present when you had this
13 conversation?
14 A I don't know. I don't know which area she
15 was in.
16 Q Could you tell me what you remember about
17 the conversation, what she said to you.
18 A I can't remember. I just -- something
19 about don't mess with the -- we got the trash and
20 stuff -- I betcha going in -- the trash in the hall.
21 Q She went to get the trash?
22 A Yeah, it was in the hall, in a plastic bag.

- 1 Q In the hall?
2 A Uh-huh.
3 Q Did you direct her what trash to get?
4 A No, it was just like in one big bag.
5 Q Oh, it was all together?
6 A Like, you pulled the -- we had the clear
7 liners in them and we pulled and put all the trash in
8 a bag.
9 Q Do you know whether she took any of that
10 trash?
11 A I don't know.
12 Q Did she ask you whose trash was whose?
13 A I don't recall.
14 Q Or which trash came from which office?
15 A No, I don't recall.
16 Q Do you recall whether she took any trash
17 from the hallway back into anybody else's office?
18 A No.
19 Q Did she direct you to do anything about the
20 trash?
21 A No.
22 Q Did she direct Ms. Cobey to do anything

- 1 about the trash?
2 A Oh, I don't know.
3 Q Did she ask you about a burn bag?
4 A I don't remember.
5 Q Would it have been your responsibility at
6 that time to do anything with burn bags?
7 A No, we were not allowed to touch the burn
8 bags at all.
9 Q The small office that you've marked with an
10 X -- could we mark this as Exhibit 2.
11 (Walters Exhibit 2 identified.)
12 BY MS. FISHER:
13 Q Directing your attention to the small
14 office, back in July of 1993, do you recall whether
15 the gentleman who occupied that office kept his
16 office tidy or neat and organized?
17 A Yeah, it was neat. It just had a whole lot
18 of trash all the time. He had two cans, two trash
19 cans in there.
20 Q And they were generally both full?
21 A Uh-huh. Out of the whole office, he always
22 had the most trash.

1 Q Other than the two trash, the general
2 appearance of the office was neat?
3 A Uh-huh. It wasn't junky.
4 Q Pardon me?
5 A It wasn't junky.
6 Q Did he generally leave papers on his
7 desk --
8 A Yes.
9 Q -- at night?
10 A Yeah. There would always be something on
11 the desk.
12 Q Were they organized in stacks, or were they
13 kind of laid --
14 A I don't know if it was in stacks or not. I
15 don't know.
16 Q Did he have a coffee table in that office?
17 A Yes.
18 Q Did he generally leave papers on the coffee
19 table?
20 A Magazines.
21 Q Any papers?
22 A Not that I recall.

1 Q Returning to the discussion that you had
2 with the woman regarding the trash, how is it that
3 you recall that this occurred on July 20, 1993?
4 A Huh?
5 Q How is it you recall this conversation
6 about the trash occurred on July 20, 1993?
7 A You're talking about how did it start?
8 Q Yes.
9 A I don't even remember.
10 Q Was Mr. O'Neill with you when you had this
11 conversation?
12 A I don't know if Hank -- he was in the
13 office, but I don't think he was right with me.
14 Q What office was he in?
15 A He was in the same -- we were right by the
16 door.
17 Q Would he stay with you generally if you
18 were cleaning the office after he unlocked it?
19 A Yes.
20 Q Would he stay -- generally would the Secret
21 Service escort stay with you during the entire time
22 you were cleaning the office?

1 A Yes.

2 Q And Mr. O'Neill stayed with you for the
3 entire time you cleaned the office that night?

4 A Yes.

5 Q Was there ever a time when he asked you to
6 leave the office?

7 A No.

8 Q Do you recall that you cleaned the office
9 that night?

10 A I don't think I remember --

11 Q The small office is the one I'm talking
12 about, Mr. Foster's office.

13 A I don't remember. But I think -- I don't
14 think we cleaned it.

15 Q Do you recall why you hadn't cleaned it?

16 A Huh-uh.

17 Q Would it be possible that you didn't clean
18 the office because after you had taken out the trash,
19 you had this conversation --

20 A Yes.

21 Q -- with this woman about the trash?

22 A Yes.

1 Q And therefore, you stopped cleaning the
2 office?

3 A Right.

4 Q Do you recall whether anybody else was with
5 this woman that evening?

6 A Huh-uh, because as far as I remember, she
7 was by herself.

8 Q Do you recall seeing a gentleman with her
9 that evening?

10 A Huh-uh.

11 Q Or another woman?

12 A No.

13 Q Is this woman black or white?

14 A She's white.

15 Q Had you ever seen her before?

16 A No.

17 Q Have you seen her since?

18 A No.

19 Q Have you since learned what her name is?

20 A No.

21 Q After you had the conversation about the
22 trash, did you go back into the office?

- 1 A No.
- 2 Q Did you ever clean the office that evening?
- 3 A I don't remember.
- 4 Q Do you remember learning why you weren't
- 5 going back in to clean the office that evening?
- 6 A Well, I think because -- I don't know. I
- 7 ain't going to say nothing because I'm not sure.
- 8 Q Do you have any recollection at all?
- 9 A No.
- 10 Q Do you recall whether Mr. O'Neill said
- 11 anything to you that evening?
- 12 A As far as the room?
- 13 Q Uh-huh.
- 14 A No.
- 15 Q He didn't tell you to stop cleaning that
- 16 suite of offices?
- 17 A I don't remember.
- 18 Q Do you recall seeing any other activity on
- 19 the second floor that evening?
- 20 A You're talking about as far as a lot of
- 21 people or something?
- 22 Q Uh-huh.

- 1 A I don't know if Gene -- used to be there
- 2 all the time for the majority or if anybody else had
- 3 to be there. But his room used to be like, when you
- 4 get off the elevators, straight past the bathrooms,
- 5 past the bathrooms when you first go. And he got a
- 6 little office to your left, it's to your left, little
- 7 door.
- 8 Q And he was there?
- 9 A I don't know if he was there or not but he
- 10 used to be there all the time but I don't know if he
- 11 was there that night.
- 12 Q Do you know what that gentleman's name is?
- 13 A Gene. They call him Gene. I don't know
- 14 what his whole name is.
- 15 Q Do you recall seeing any other activity on
- 16 the second floor the evening of July 20, 1993?
- 17 A No.
- 18 Q Do you recall seeing any other activity on
- 19 the first floor?
- 20 A No.
- 21 Q Do you recall wondering why you were asked
- 22 not to finish cleaning the offices that evening?

- 1 A Huh-uh.
2 Q Did you see anyone carrying any folders or
3 papers around on the evening of July 20, 1993?
4 A No.
5 Q No?
6 A No.
7 Q Do you recall seeing anyone walking around
8 with any type of materials that evening?
9 A No.
10 Q After you had this conversation regarding
11 the trash, do you recall what you did next?
12 A Went over to the first floor.
13 Q You went down to the first floor?
14 A Uh-huh.
15 Q Why did you --
16 A That's all I remember.
17 Q Do you recall why you went down to the
18 first floor?
19 A No.
20 Q Did someone ask you to go down to the first
21 floor?
22 A I don't remember.
-

- 1 Q Did Mr. O'Neill ask you to go down to the
2 first floor?
3 A No.
4 Q Did Mr. O'Neill go down to the first floor
5 with you?
6 A I don't remember.
7 Q Did Ms. Cobey go down to the first floor
8 with you at that time?
9 A I believe so.
10 Q Did you finish your cleaning duties that
11 evening on the rest of the floor that evening?
12 A No.
13 Q Did you finish out your regular shift the
14 evening of July 20, 1993?
15 A You're talking about before I went home?
16 Q Yes.
17 A Yes.
18 Q You stayed at the White House until 5:45
19 a.m.
20 A Uh-huh -- well, no, I don't stay over
21 there. Most of the time we go over there about 15
22 after or 5:30. We have to go back to the old

- 1 building and turn our cars back out.
2 Q Do you recall whether you stayed on the
3 first floor the rest of the evening --
4 A No.
5 Q -- on July 20, 1993?
6 A I know I stayed on the first floor.
7 Q What do you recall that you did?
8 A I don't remember why I went down to the
9 first floor.
10 Q Do you recall how long you stayed down on
11 the first floor?
12 A No.
13 Q Do you recall wondering why you didn't go
14 back to finish the cleaning activities that you were
15 conducting?
16 A No.
17 Q Did you ever come to find out why you
18 didn't go back upstairs to finish your cleaning
19 activities that evening?
20 A Why I didn't go back?
21 Q Uh-huh.
22 A I went back to clean my rooms. You're
-

- 1 talking about my other rooms besides the lockups?
2 Uh-huh.
3 Q You did?
4 A Uh-huh.
5 Q Did you see any other activity up on the
6 second floor at that time?
7 A No.
8 Q Do you recall overhearing any telephone
9 conversations that evening?
10 A No.
11 Q Do you recall learning that Mr. Foster's
12 body was found --
13 A Yeah.
14 Q -- that evening?
15 A I heard -- just hearsay. I don't know who
16 I heard it from but I heard he had got killed.
17 Q Did you hear it that night?
18 A Yes.
19 Q Do you remember who you heard it from?
20 A No.
21 Q Do you recall what they told you?
22 A That he killed himself or something.

1 Q Do you recall any other conversations about
2 his death?

3 A No.

4 Q Do you recall any conversations at the
5 White House about White House personnel taking
6 anything out of Mr. Foster's office on the night of
7 July 20, 1993?

8 A No.

9 Q Have you since learned any facts about that
10 issue?

11 A No. Nobody talk about it anymore.

12 Q What about then, were there a lot of people
13 talking about it during that time period?

14 A Uh-huh.

15 Q Do you recall any conversations?

16 A No, the only thing I just heard was that he
17 killed himself, but that's the only thing --

18 Q Do you recall hearing any conversations
19 about papers being removed from his office?

20 A No.

21 Q Did you ever help anybody remove anything
22 from his office?

1 A No.

2 Q Do you believe it may have been Mr. O'Neill
3 who told you that Mr. Foster had died that evening of
4 July 20, 1993?

5 A It could have been. I'm not sure. It
6 could have been.

7 Q Do you recall whether Mr. O'Neill left you
8 that evening at any time while you were in cleaning
9 the suite of offices on the second floor?

10 A What you talking about, lockups?

11 Q Uh-huh.

12 A No.

13 (Pause.)

14 Q Do you recall Mr. O'Neill ever saying
15 anything to you about a woman carrying folders that
16 evening?

17 A No.

18 Q And it's your testimony that you don't
19 recall whether it was Mr. O'Neill who told you to
20 leave the room that you were cleaning --

21 A No.

22 Q -- on the second floor?

- 1 A No.
- 2 Q So you don't recall how it was that you
3 left that office?
- 4 A Huh-uh.
- 5 Q Do you recall whether it was locked after
6 you left?
- 7 A No.
- 8 Q Was Mr. O'Neill with you when you had the
9 conversation with the woman about the trash?
- 10 A I don't remember.
- 11 Q Did you ever learn at some later time that
12 this woman had actually retrieved any trash?
- 13 A As far as taking anything?
- 14 Q The trash in the hallway that you had
15 already taken from Mr. Foster's office.
- 16 A What you mean, taking out the bag?
- 17 Q Yes.
- 18 A No.
- 19 Q Did she take the bag?
- 20 A I don't think she took the bag. It was a
21 great big trash bag.
- 22 Q Did you ever take the little bag out of the

- 1 big trash bag for this woman?
- 2 A No.
- 3 Q Do you know whether she ever took a little
4 bag out of the big bag?
- 5 A No.
- 6 Q Did you ever have a conversation with
7 Ms. Cobey about this conversation that you had
8 regarding the trash?
- 9 A What you mean?
- 10 Q Did you ever discuss with Ms. Cobey this
11 woman's request?
- 12 A Are you talking about as far as the bag?
- 13 Q About where the trash was.
- 14 A No, I don't remember.
- 15 Q Do you recall anything else unusual that
16 evening on July 20, 1993?
- 17 A No.
- 18 Q Have you talked to anybody about the events
19 that occurred on July 20, 1993 since that time?
- 20 A No.
- 21 Q Have you talked to anybody about the
22 conversation that you had with the woman in the

1 hallway when she asked you about the trash?

2 A No.

3 Q Was there ever a time when you were
4 questioned by the FBI about the evening of July 20,
5 1993?

6 A By the FBI? Well, when I went down to the
7 grand jury?

8 Q You spoke to someone other than testifying
9 at the grand jury. Was there another time when you
10 spoke to somebody about the events of July 20, 1993?

11 A They came -- they came to my house, yeah.
12 That was the first. It was two -- I don't know what
13 date. It was two of them that came to my house.

14 Q Was it shortly following --

15 A It was after.

16 Q Shortly after or a year after or months
17 after?

18 A I don't know how long after, but it was
19 after. It was two of them. There was a white guy
20 and a black guy.

21 Q Do you recall seeing any people in the
22 small lockup room that evening?

1 A No.

2 Q Do you recall seeing any people in the big
3 room within the lockup room that evening?

4 A No, there wasn't anybody that was there.

5 Q Do you recall seeing anyone in the First
6 Lady's suite that evening?

7 A No.

8 Q Do you remember any lights being on in the
9 First Lady's suite that evening?

10 A No.

11 Q When you went down to the first floor, did
12 you go down with Mr. O'Neill, or did you leave him on
13 the second floor?

14 A I don't remember.

15 MS. FISHER: I thank you for your help. I
16 have no further questions. I don't know if Mr. Cole
17 has any questions for you.

18 EXAMINATION

19 BY MR. COLE:

20 Q Yes, I have a few questions, Ms. Walters.

21 My name is Lance Cole and I'm one of the attorneys
22 for the Democrats on this committee and we very much

1 appreciate you being here. And I'll try to go
2 quickly and not take more of your time than is
3 necessary, but I do have a few follow-up questions.

4 When you report to work at the White House,
5 is there a sign-in sheet or is there a record of your
6 appearance for work?

7 A Are you talking like when I first get
8 there? Are you talking about when I first go to
9 work?

10 Q Yes.

11 A When I first go to work, I have to go to
12 the old building. We have a cart, you have to turn
13 it in and out. When you leave, you have to turn it
14 out. There's no sheet or nothing like that.

15 Q Is there a schedule that you follow for the
16 offices that you clean at night?

17 A You mean like during the same -- during the
18 same routine?

19 Q No, I mean like a written schedule where
20 you would check off or mark off --

21 A No.

22 Q -- an office. Does anyone check your work

1 and see that you've cleaned particular offices?

2 A Yeah, we have supervisors.

3 Q And who was your supervisor in July of 1993
4 when you were cleaning the second floor of the west
5 wing?

6 A Ms. Hanneman.

7 Q Do you know if she keeps any records of
8 what you do when you clean the offices in the west
9 wing?

10 A I don't know.

11 Q On the night of July 20th, do you recall
12 when you learned that Mr. Foster had killed himself?

13 A Say it again.

14 Q Do you remember when you learned that night
15 that Mr. Foster had killed himself?

16 A It was later that night.

17 Q Was it before or after you spoke with the
18 young lady about the trash bag?

19 A It was after.

20 Q And do you have any memory as to how you
21 learned that, who you learned it from?

22 A No.

1 Q On that evening when you were in the large
2 locked-up office near the elevators on the second
3 floor, was Mr. O'Neill with you the entire time you
4 were in there?

5 A Yes.

6 Q Is it your recollection that you emptied
7 the trash from both of the smaller offices that are
8 inside the large locked-up area?

9 A All the trash?

10 Q Yes.

11 A No. I pulled -- as far as I know, I didn't
12 pull his office. Ms. Cobey pulled his office and I
13 pulled the other trash. I mean -- yeah.

14 Q Your recollection is that night you pulled
15 the trash from the reception area of where the desks
16 are sitting?

17 A Right.

18 Q And then Ms. Cobey pulled both the other
19 offices?

20 A I don't know if she pulled both of them,
21 but I know -- I don't know if she pulled the other
22 one.

1 Q But you do know that she pulled the trash
2 from Mr. Foster's office?

3 A Yes.

4 Q And how do you know that?

5 A Because she went in there and pulled the
6 trash.

7 Q You saw her do it?

8 A Uh-huh.

9 Q And was Mr. O'Neill there when she did
10 that?

11 A I don't know. I don't know if -- he would
12 sit down in the other part of the area.

13 Q When you or Ms. Cobey would go into those
14 smaller offices to pull the trash, would Mr. O'Neill
15 go with you or would he wait in the reception area?

16 A Sometimes he'd sit out in that part.
17 Sometimes he'd stand by the doorway.

18 Q Do you recall that night after you pulled
19 the trash from that large locked-up office, did you
20 finish cleaning the office?

21 A No, I don't recall.

22 Q Do you recall whether it was before or

1 after you pulled the trash from that office that you
2 talked to the young lady about the large trash bag by
3 the elevator?

4 A You say after the trash was pulled? It was
5 after.

6 Q It was after?

7 A Uh-huh.

8 Q I assumed that it would be, but I know
9 there are other offices on that floor that you could
10 have pulled that trash from. It was after you pulled
11 the trash from that?

12 A Yes.

13 Q And who would empty the burn bags in the
14 large locked-up offices?

15 A The Secret Service.

16 Q And on that particular night, it would have
17 been Mr. O'Neill?

18 A Yes.

19 Q Do you remember whether he emptied the burn
20 bags in the large locked-up office that night?

21 A I don't remember.

22 Q Had Mr. O'Neill ever accompanied you into

1 those locked-up offices before that night?

2 A Yes.

3 Q And what was his practice for emptying the
4 burn bags? Do you recall when he would do that?
5 Would he do it when you started, when you finished?

6 A No. When we go -- when I pulled the trash,
7 he would go get the burn bags. In the whole office,
8 in each section, the other open area, they have burn
9 bags in each of the sections where the desk is at.

10 Q And what would he do?

11 A Take the burn bags, empty them -- they
12 have -- it's like a brown paper bag, long paper bag.
13 They empty the burn trash in there and write on the
14 bag "burn."

15 Q So he would empty all of the small burn
16 bags into one larger burn bag?

17 A Right.

18 Q And it's your memory that there was a burn
19 bag in the smaller interior office which I believe
20 you testified you knew was Mr. Foster's office?

21 A Yes.

22 Q And how do you know that?

1 A Because I clean the room every day.
2 Q And you would see a burn bag?
3 A Yes.
4 Q Do you have any memory as to whether on
5 that particular night, that is the night of July 20th
6 when Mr. Foster committed suicide, whether there was
7 a burn bag in that office that night?
8 A No, I'm not sure.
9 Q Did you go into that office that night?
10 A No.
11 Q Did Mr. O'Neill go into that office that
12 night?
13 A I'm not sure.
14 Q And how about Ms. Cobey?
15 A Yes.
16 Q She did go into that office?
17 A Uh-huh.
18 Q She pulled the trash from the office?
19 A Yes.
20 Q You may have testified to this, but I can't
21 recall. Did you go into the other locked-up offices
22 on the second floor that night?

1 A First Lady. There's only two.
2 Q There are only two?
3 A Uh-huh.
4 Q So one of the locked-up offices is the big
5 office by the elevator?
6 A Right. The small one is the First Lady's
7 office.
8 Q Is the First Lady's office?
9 A Right.
10 Q Did you go into the First Lady's office
11 that night?
12 A Yes.
13 Q Was it before or after you went into the
14 big office by the elevator?
15 A I don't remember.
16 Q Did Mr. O'Neill let you into the First
17 Lady's office?
18 A Yes.
19 Q As well as the larger office that night;
20 did you pull the trash from that office?
21 A The First Lady's office?
22 Q Yes.

1 A Yes.

2 Q And did you finish cleaning that office
3 that night?

4 A Yes.

5 Q And do you remember whether Mr. O'Neill
6 then locked that office up when you were finished?

7 A I don't remember.

8 Q What do you remember about that night that
9 happened after you pulled the trash from the large
10 office by the elevator except what you've already
11 told us about, which was the young lady asking you
12 about the trash?

13 A That's about it. That's about it.

14 Q And if I understood you correctly, you
15 normally started pulling the trash as soon as the
16 Secret Service agent would let you into the office
17 which would be shortly after their roll call at
18 10:30; is that correct?

19 A Yes.

20 Q So roughly around 11:00?

21 A Yeah. It's in between that time, 10:30 and
22 11:00.

1 Q Do you remember the night that we're
2 interested in, which is the night of July 20th,
3 whether that is about the time you pulled the trash?
4 Was there anything different about that night in
5 terms of your schedule?

6 A No.

7 Q You think it was about the time you pulled
8 the trash, which would be around 11:00?

9 A It used to be before 11:00, sometimes
10 quarter to 11:00, sometimes 25 of.

11 Q You're shift continued to 5:45 in the
12 morning?

13 A Yes.

14 Q Can you help me understand what you did, if
15 it took you 15 minutes, a half hour to pull the trash
16 from the offices that night, what you did between
17 that time and 5:45 when your shift was over?

18 A I remember -- most of the time we'd go
19 across the street about 15 after anyway. Then we
20 just wait until the time we leave.

21 Q 15 after which --

22 A After 5:00.

1 Q So what I'm asking is between 11:00, 11:30,
2 whenever you finished pulling the trash from the
3 locked-up offices on the second floor and 5:00 the
4 next morning, what did you do in that time period
5 that night?

6 A Are you talking about lockups or the whole
7 floor?

8 Q The whole floor. Did you clean the rest of
9 the floor that night?

10 A Yes.

11 Q Can you tell us how long you were on the
12 second floor of the west wing that night after you
13 finished the lockups, pulling the trash from the
14 lockups?

15 A No.

16 Q Was it an hour, two hours? Can you give
17 us --

18 A You're talking about after?

19 Q The second floor of the west wing, cleaning
20 all the rest of the floor beyond the locked-up
21 offices.

22 A You're talking about what time did I leave

1 from up there?

2 Q Yes.

3 A I don't remember what time because we have
4 a break at 4:00 and most of the time we can get
5 through early anyway, you know. Sometimes I sit up
6 there. Sometimes I just go ahead downstairs and
7 wait.

8 Q So your normal break is at 4:00?

9 A 4:00. We have one at 11:30 to 11:45 and
10 4:00 to 4:15.

11 Q Do you remember on the night of July 20th
12 whether you took your normal break at 11:30, 11:45?

13 A No, because sometimes it all depends how
14 long you've been in the lockup. You can't just go on
15 your breaks. You have to wait until you do the
16 lockups.

17 Q Do you remember whether you took a break
18 that night?

19 A Yeah, I took a break, but I don't know
20 exactly what time.

21 Q Was the break before or after you talked to
22 the young lady about the trash?

1 A I'm not sure. I'm not sure because I went
2 down to the first floor. I don't know if I took it
3 when I went down there.

4 Q And do you remember seeing anyone else on
5 the second floor of the west wing that night other
6 than yourself, Ms. Cobey and Mr. O'Neill?

7 A No.

8 Q Did you see an African-American woman
9 anywhere in the west wing that night?

10 A I don't recall.

11 Q The young lady who asked you about the
12 trash, do you know whether she was someone who worked
13 in the White House?

14 A No, I'm not sure.

15 Q Do you remember whether she was wearing a
16 White House pass?

17 A No, I'm not sure.

18 Q So you didn't recognize her --

19 A Huh-uh.

20 Q -- as anyone who worked on the second floor
21 of the west wing?

22 A No.

1 Q How long have you worked with Mr. O'Neill?

2 A I mean -- what you mean?

3 Q I believe you testified that you had worked
4 at the White House for three years?

5 A Yes.

6 Q Have you known Mr. O'Neill during all of
7 that time, that he worked the same shift as you did?

8 A I don't know. I can't recall because I
9 don't know from the time I start, I see him -- what
10 I'm saying? I don't know if he was there from the
11 time I got there, you know.

12 Q When did you start working in the White
13 House?

14 A In August.

15 Q Of 1992?

16 A Yeah. It will be three years next month.

17 Q At the time we're talking about, which is
18 July of 1993, you had been working there about 11
19 months?

20 A Yes.

21 Q Had you ever worked with Mr. O'Neill prior
22 to the night of July 20th? In other words, had he

1 ever let you into the locked-up offices prior to that
2 night?

3 A You're talking about besides doing the
4 lockups?

5 Q I'm talking about doing the lockups. Had
6 he ever done the lockups with you prior to that
7 night?

8 A Besides that night, yeah, like fill-ins,
9 like if the regular one isn't there, sometimes fill
10 in, and sometimes they might have somebody else and
11 they might have him another time.

12 Q Do you have any sense of how many times he
13 had done the lockups with you prior to that night?

14 A No.

15 Q Close to five, 10, 20, any sense?

16 A No.

17 Q Have you ever heard Mr. O'Neill say
18 anything about the people who worked during the days
19 in the White House, the regular staff?

20 A No.

21 Q Have you ever heard him say anything
22 critical or negative about them?

1 A No.

2 Q Have you ever heard anyone who works for
3 the Secret Service say anything negative or critical
4 about people working in the Clinton Administration?

5 A No.

6 Q Did you normally talk with the Secret
7 Service agents when you worked?

8 A I talk to them, but you know -- talk to
9 them and joke with them, but as far as conversation,
10 no.

11 Q I believe I understood you to testify that
12 when you spoke with the young lady about the trash,
13 it was after you had pulled the trash from the large
14 lockup office?

15 A Yes.

16 Q Do you have any memory as to where
17 Mr. O'Neill was at that time?

18 A No, no.

19 Q Was he on the second floor of the west
20 wing?

21 A Yes, he was there.

22 Q You believe he was somewhere on the second

1 floor, but you don't know which office or where he
2 was?

3 A Right.

4 Q And I believe you testified that
5 Mr. O'Neill would stay -- whatever Secret Service
6 guard was escorting you would stay with you while you
7 cleaned the locked-up offices?

8 A Yes.

9 Q Would they lock those offices back up
10 immediately when you finished cleaning them?

11 A Yeah, sometimes they'd lock them up -- when
12 I was through, I'd go ahead about my business.

13 Q So when you were through cleaning an
14 office, you would go on to your next duty and leave
15 it to the Secret Service officer?

16 A Yes.

17 Q Do you have any memory of whether
18 Mr. O'Neill locked up the large office by the
19 elevator --

20 A I don't know.

21 Q -- that evening?

22 A I don't know.

1 Q I'm confused about one thing and perhaps
2 you can clear this up. You're sure that you pulled
3 the trash from the large office by the elevator that
4 night?

5 A Uh-huh. Yes.

6 Q Did you finish cleaning that office that
7 night?

8 A I can't remember.

9 Q Because I thought, and perhaps I
10 misunderstood you, but I thought you testified
11 earlier that you did not finish cleaning that office
12 that night?

13 A I don't remember.

14 Q So you don't remember one way or the other?

15 A No.

16 Q And you don't have any recollection of
17 anyone coming into that office and interrupting you
18 so you couldn't finish your cleaning?

19 A No.

20 Q You have no memory of seeing anyone on the
21 second floor that night other than yourself,
22 Ms. Cobey, Mr. O'Neill?

- 1 A That's all except for the young lady.
2 Q And the young lady who came up to get the
3 trash?
4 A Yes.
5 Q When you went down to the first floor after
6 you pulled the trash from the locked-up offices, did
7 Mr. O'Neill go downstairs with you?
8 A I don't remember.
9 Q Do you remember whether he was still on the
10 second floor of the west wing at that time?
11 A No.
12 Q Did you see him again that night?
13 A Yes. I'm pretty sure I saw him again.
14 Q When do you think you saw him again?
15 A Walking.
16 Q On the second floor?
17 A No, probably on the first floor.
18 Q Did you see him again on the second floor
19 that night?
20 A I don't remember.
21 Q But if I understand your testimony
22 correctly, you continued to work on the second floor
-

- 1 that night after you pulled the trash from the
2 locked-up offices?
3 A Yes.
4 Q And if I'm understanding you correctly,
5 pulling the trash and cleaning the locked-up offices
6 was the first thing that you would do on the second
7 floor, and then you would clean the other offices and
8 pull the other trash?
9 A No, I pulled them -- when I get up there, I
10 pull up all my trash, I pull it until they come up
11 there.
12 Q From all the offices on the entire floor?
13 A Right, and if he come up there before I
14 finish pulling my trash, I stop.
15 Q And so then you pulled the trash from the
16 lockups and clean the lockups, whatever cleaning
17 needs to be done in addition to that?
18 A Yes.
19 Q Do you vacuum the lockups every night?
20 A Yes.
21 Q Did you vacuum the lockups that night?
22 A I don't remember.

1 Q Do you remember whether you had your vacuum
2 cleaner up there that night?

3 A Yes.

4 Q Do you remember whether you took it into
5 the large locked-up office by the elevator?

6 A I don't remember.

7 Q Did you vacuum the First Lady's office that
8 night?

9 A Yes.

10 Q You remember vacuuming the First Lady's
11 office?

12 A Yes.

13 Q But you don't remember one way or the other
14 whether you vacuumed --

15 A No, I don't remember.

16 Q -- the large office. I'm almost finished.
17 After the time that you went down to the first floor
18 of the west wing, which was after you pulled the
19 trash from the locked-up offices, you then came back
20 up to the second floor of the west wing sometime that
21 night?

22 A Yes, because most of the time -- see, I

1 don't know why I went down to the first floor, but
2 our break room is down at the first floor so I might
3 have taken my break. I'm not sure because we go to
4 the first floor where we take our break at.

5 Q But you are sure, after you went down to
6 the first floor, you came back up to the second floor
7 of the west wing?

8 A Yes.

9 Q Did you see the light on in the large
10 locked-up office?

11 A I don't know.

12 Q Was the door locked?

13 A I don't know.

14 Q Can you remember whether the door was
15 opened or closed?

16 A No.

17 Q What about the First Lady's office?

18 A Yeah, that was locked.

19 Q That was locked when you came back up
20 stairs?

21 A Uh-huh.

22 Q Was there any light on under the door,

- 1 could you see?
2 A No, I don't remember.
3 Q So you remember that the First Lady's
4 office was locked, but you can't remember one way or
5 another --
6 A No, because -- I said that because right
7 after I cleaned the First Lady's office, he locked it
8 back because --
9 Q So you remember Mr. O'Neill locking the
10 First Lady's office after you finished cleaning it?
11 A Yes.
12 Q Was that before or after you pulled the
13 trash from the other locked-up office?
14 A I'm not sure.
15 Q What do you normally do in terms of the
16 order in which you clean those two locked-up offices?
17 A What you mean?
18 Q Which one do you clean first usually?
19 A Either one. Sometimes the First Lady,
20 sometimes the big one.
21 Q And who decides?
22 A Sometimes I open up either one.
-

- 1 Q I'm not trying to be funny.
2 A I know.
3 Q Does the Secret Service decide which one
4 they want to open for you or do you decide which one
5 you want to clean?
6 A I'll say it like this. Sometimes, if the
7 occupant is in there, we just go to the next one.
8 Q Is the rule that you don't clean the office
9 if the occupant is inside?
10 A You can't clean it like that -- now, they
11 might -- most of the time you might ask how long are
12 they going to be or can you get the trash and come
13 back and vacuum and dust when they leave.
14 Q When did you transfer to the east wing?
15 A I don't know how long it had been.
16 Q You told me, I believe, that you started
17 working in the White House in August of 1992?
18 A Yes.
19 Q Between August of 1992 and July of 1993, did
20 you always clean the second floor of the west wing?
21 A Yes, besides if somebody will come in, like
22 we have to work -- kind of pool together.

1 Q And did you continue to clean the second
2 floor of the west wing until you transferred to the
3 east wing?

4 A Yes.

5 Q So the entire time you worked in the west
6 wing, it was your job to clean the second floor?

7 A Yes.

8 Q Do you ever remember a time when you were
9 cleaning the large lockup office and someone came in
10 and you had to leave?

11 A No.

12 Q Ever, at any time?

13 A No.

14 Q Do you ever remember a time when you were
15 cleaning the large locked-up office with Mr. O'Neill
16 and he asked you to leave --

17 A No.

18 Q -- before you finished your cleaning?

19 A No, he ain't never asked me to leave.

20 Q Mr. O'Neill never has asked you to leave
21 that you recall?

22 A No, not that I recall.

1 Q What about the First Lady's office, was
2 there ever a time when you were cleaning the First
3 Lady's office when you were asked to leave?

4 A No.

5 Q Would it be unusual at the time that you
6 cleaned those offices, which is around 11:00 we can
7 say, for someone to come back in and interrupt you
8 while you were cleaning?

9 A Yeah, like if they come back to get
10 something or something like that.

11 Q But as best you can recall today, there's
12 never been a time when you were cleaning that large
13 locked-up office and someone came back in and said
14 sorry, we have to use the office you have to leave?

15 A No, they never said that.

16 MR. COLE: I don't think I have anything
17 further.

18 EXAMINATION

19 BY MS. FISHER:

20 Q I have a couple quick questions because now
21 I'm confused. The evening of July 20, 1993, there
22 was a reason why you didn't finish cleaning the

- 1 office; correct?
- 2 A Uh-huh.
- 3 Q But you don't recall who it was who told
- 4 you not to finish cleaning the office?
- 5 A No, I don't remember.
- 6 Q After you pulled the trash and then you had
- 7 a conversation with a woman in the hallway, you
- 8 testified earlier that you went downstairs to the
- 9 first floor?
- 10 A Yes.
- 11 Q Do you recall how long you were down on the
- 12 first floor?
- 13 A No.
- 14 Q You don't recall when you went back up to
- 15 the second floor?
- 16 A No.
- 17 Q Was Ms. Cobey with you the entire time when
- 18 you were down on the first floor?
- 19 A I'm not sure.
- 20 Q Generally, once you pulled the trash, what
- 21 would you do with the trash?
- 22 A Leave it in the hall.
-

- 1 Q Leave it in the hall?
- 2 A They have somebody that picks the trash up
- 3 on every floor, the guy, you know.
- 4 Q At a particular time in the evening?
- 5 A No.
- 6 Q And it was your testimony earlier that you
- 7 don't recall on the night of July 20, 1993 whether
- 8 you had cleaned the First Lady's locked-up office
- 9 prior to or after cleaning the big lockup office?
- 10 A You're talking about the first or not?
- 11 Q Yes.
- 12 A No.
- 13 Q I have a couple more questions. After you
- 14 went up to the second floor for the second time in
- 15 the evening on July 20, 1993, how long did you stay
- 16 up there, do you recall?
- 17 A You're talking about after I did the
- 18 lockups and everything?
- 19 Q Yes.
- 20 A No, I don't remember. Sometimes I sit
- 21 up -- sometimes we'd get through early. Sometimes
- 22 I'd sit up there until 5:00, just sit up there.

- 1 Q Until 5:00 a.m. in the morning?
2 A Yeah.
3 Q Do you recall what you did that night?
4 A No.
5 Q Other times, would you sit and wait
6 downstairs?
7 A Yeah, sometimes. Like if we get done
8 early, where everybody else would be.
9 Q Do you recall anyone else that evening
10 talking about Mr. Foster's death --
11 A No.
12 Q -- downstairs in the break area?
13 A No.
14 Q Do you recall what time you finished up
15 cleaning that evening?
16 A No.
17 Q Do you recall going back downstairs?
18 A When?
19 Q That evening, July 20, 1993, anything about
20 it.
21 A No.
22 Q About the time or who you were with?
-

- 1 A No.
2 Q Do you recall having a conversation with
3 Ms. Cobey about anything at all that happened on the
4 night of July 20, 1993 at any time?
5 A No. As far as I know, we just -- like I
6 said, I just know the hearsay about the man had
7 killed himself or whatever. That's all. That's all
8 I know or heard.
9 MS. FISHER: Thank you.
10 MR. COLE: I have two more questions and
11 I'll be very quick. This is really helpful to us and
12 we appreciate it.
13 EXAMINATION
14 BY MR. COLE:
15 Q When the young woman asked you about the
16 trash that night, do you remember what she said to
17 you? Did she tell you not to do anything with the
18 trash? I believe you started to say that earlier.
19 A Yeah, I'm pretty sure she did because the
20 bag was open and she was going in the trash -- the
21 bag in the hall.
22 Q The large bag that had smaller bags inside

- 1 it was open?
2 A Yes.
3 Q And she was going into that larger bag?
4 A Yeah.
5 Q And she told you not to do anything with
6 the trash?
7 A Yes.
8 Q And so did you do anything further with the
9 trash that night?
10 A I left it alone. I didn't mess with the
11 trash.
12 Q Did you see the young lady take anything
13 out of the large bag? Did she take a smaller bag
14 out?
15 A No, I don't remember.
16 Q Did you ever see her later that night
17 either on the second floor or on the first floor like
18 near the chief of staff's office with any trash bags?
19 A No.
20 Q Did she tell you why you shouldn't do
21 anything with the trash?
22 A No.
-

- 1 Q Do you remember whether you knew at that
2 time that Mr. Foster had killed himself?
3 A I don't remember. I don't remember. I
4 don't remember.
5 Q Do you think that you were in the middle of
6 cleaning the big locked-up office when she asked you
7 about the trash?
8 A No. As far as -- it's been a while. As
9 far as I remember, I don't know if he -- I keep
10 thinking it was in the hall when she asked him about
11 the trash. I don't remember seeing -- I don't know
12 if she was in the office or not, but as far as I
13 remember, it was in the hall. As far as I remember,
14 she said what do we do with the trash.
15 Q So when she asked you about that, you were
16 in the hall?
17 A Right, as far as I remember.
18 Q Did she come up the stairs or off the
19 elevator?
20 A Elevator.
21 Q And were you standing in the area near the
22 elevator where the trash was?

1 A I don't know if I was coming out of the
2 room or not, because I'm pretty sure -- I don't know
3 if she was in the office or not.

4 Q You don't know if she was in the large
5 locked-up office or not?

6 A Yeah, went in there, as far as I remember,
7 I saw her in the hall.

8 Q As far as you remember, she came off the
9 elevator, asked you where the trash was and then
10 began to look in the large bag?

11 A Uh-huh.

12 Q Was the large bag on the opposite side of
13 the elevator from the locker?

14 A To your right. If the elevator is to the
15 right, it's a little corner.

16 Q Is that between the elevator and the doors
17 to the large locked-up office?

18 A Right by it, right.

19 Q There's not much room there; if I recall
20 it, it's a small space?

21 A Right.

22 Q You don't know whether she went into the

1 large locked-up office?

2 A Right.

3 Q Do you know if you went back into the large
4 locked-up office at that time?

5 A After she asked about the trash?

6 Q After she asked you about the trash, did
7 you go back in the large locked-up office?

8 A I don't think so.

9 Q Do you know whether Mr. O'Neill was still
10 in the large locked-up office at that time?

11 A I don't know.

12 Q How about Ms. Cobey, can you remember where
13 she was?

14 A No, I don't know if she went back to her
15 bathroom or not.

16 Q She normally does the bathrooms?

17 A She normally does bathrooms anyway.

18 Q And she helps you with the lock up office?

19 A Yeah, she used to help out.

20 Q But you don't remember whether there was
21 anyone else present, other than you and the young
22 lady who got off the elevator at the time she was

1 looking through the trash?

2 A No.

3 Q Do you remember whether the doors in the
4 large locked-up office were closed then?

5 A Are you talking about when I first got
6 ready to do the lockups?

7 Q No, when the young lady got off the
8 elevator and asked about the trash.

9 A Was it open?

10 Q Yes.

11 A I don't know.

12 MR. COLE: I don't think I have anything
13 further.

14 MS. FISHER: Thank you so much.

15 (Whereupon, at 4:39 p.m., the deposition
16 was concluded.)

17

18

19

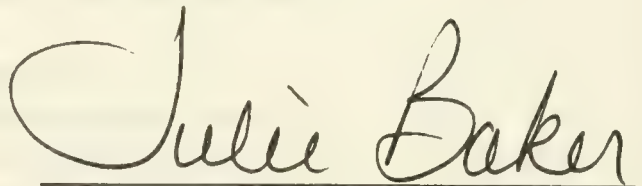
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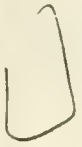
I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

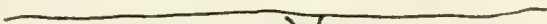
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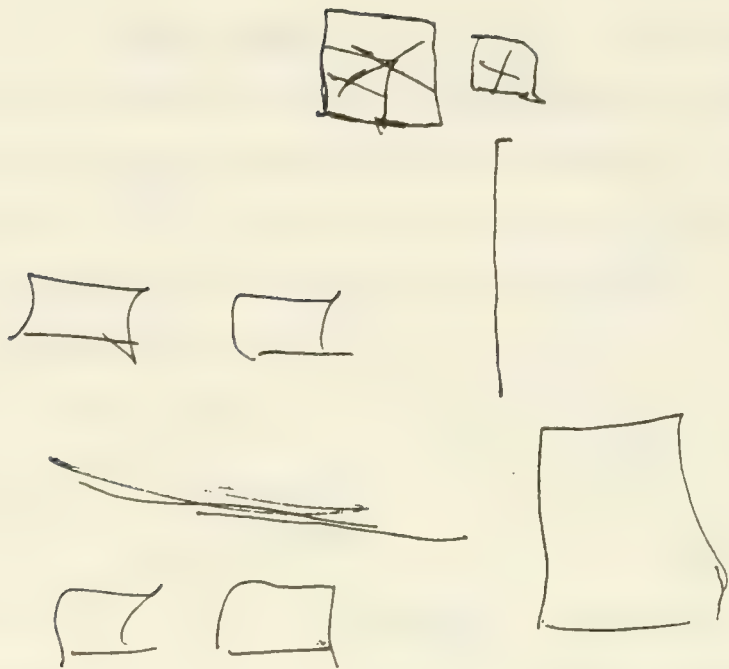
Men



PENGAD-Bayonne, N. J.

DEPOSITION
EXHIBIT

1
Walters



PENGAD-Beyenne, M. J.

DEPOSITION
EXHIBIT

2

Walters

**DEPOSITION OF SUSAN P. THOMASES
IN RE: S. RES. 120**

MONDAY, JULY 17, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of SUSAN P. THOMASES, called for examination pursuant to notice of deposition, at 1:10 p.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

EVERETT C. JOHNSON, JR., Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
LANCE COLE, Esq.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

BENITO ROMANO, Esq.
SEAN MALONEY, Esq.
Wilkie, Farr & Gallagher
One Citicorp Center
153 East 53rd Street
New York, New York 10022-4677
On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Susan P. Thomases | |
| by Mr. Johnson | 3 |
| by Mr. Ben-Veniste | 123 |
| by Mr. Johnson | 130 |

1 PROCEEDINGS

2 Whereupon,

3 SUSAN P. THOMASES

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q Good afternoon, Ms. Thomases. Thank you
9 for coming down to Washington to give testimony
10 today. We've met very briefly off the record. Let
11 me reintroduce myself again for the benefit of the
12 record. My name is Everett Johnson and I'm one of
13 the attorneys representing the Majority members of
14 the Special Senate Committee to investigate the
15 Whitewater and related matters.

16 And what brings us here, Ms. Thomases, is
17 Senate Resolution 120 which creates the committee and
18 directs an investigation into certain topics related
19 generally to what the topic at least has come to be
20 known as Whitewater. Specifically today what we want
21 to inquire about is the investigation into the death
22 of Vincent Foster on or about July 20, 1993 and more

4

1 specifically we want to inquire into the handling of
2 the documents in Mr. Foster's office at or around the
3 time of his death. So the questions that I ask will
4 relate more or less generally to that topic.

5 Let me ask you just a couple of preliminary
6 questions. I'm sure you've been in many
7 depositions. Have you ever actually been deposed
8 before?

9 A Yes.

10 Q For the benefit of our mutual memories,
11 I'll remind us of some obvious facts. Let's try not
12 to speak at the same time and I'm sure Julie would
13 appreciate it if you try to answer verbally rather
14 than with gestures or nods. If you wish to speak
15 with your attorney at any time or if you'd like to
16 take a break, Ms. Thomases, just say so and we'll do
17 that at any time.

18 A Thank you.

19 Q I will try and be clear. I will sometimes
20 fail, and I'll count on you to let me know if a
21 question I've asked doesn't make any sense or doesn't
22 mean anything to you and we'll just bring it around

1 to something that we can both understand.

2 In preparing for your deposition testimony
3 here today, Ms. Thomases, did you have an opportunity
4 to confer with your counsel about the testimony?

5 A Yes, I did.

6 Q And other than attorneys representing you
7 personally, was anyone else present in that meeting
8 or meetings?

9 A No, there was no one else present.

10 Q Other than the meetings that you've had
11 with counsel to discuss your deposition testimony,
12 have you discussed it with anyone else?

13 A Yes.

14 Q With whom have you discussed it?

15 A My husband.

16 Q Other than your husband, have you discussed
17 the testimony with anyone?

18 A No.

19 Q Could you take just a minute or two and
20 perhaps commencing with your graduation from law
21 school, inform us about your professional
22 background.

1 A My professional background?

2 Q Sure. I just want to get a little
3 chronology, a little bio.

4 A I graduated from law school. I went --
5 after taking the Bar exam, I went to work in what was
6 then Senator Bill Bradley's campaign for Senate and
7 returned to Wilkie, Farr in February of 1979.

8 Q Why do you say "returned"? Did you start
9 work at Wilkie, Farr out of law school?

10 A I was a summer associate there and I worked
11 part-time there the last year of law school.

12 Q Where did you go to law school?

13 A Columbia.

14 Q I think you said you returned, after
15 working with Senator Bradley's office, you returned
16 to Wilkie, Farr?

17 A No, I worked with Senator Bradley as a
18 candidate, not as a Senator.

19 Q And then what year did you return to
20 Wilkie, Farr?

21 A In February of 1979.

22 Q What was your job title at Wilkie, Farr at

1 that time?

2 A Associate.

3 Q Did you work in a particular discipline?

4 A Yes.

5 Q Which one?

6 A Corporate.

7 Q What's the next thing that happened in your
8 professional career? For example, were you elected
9 to the partnership of Wilkie, Farr?

10 A I was elected to the partnership of Wilkie,
11 Farr in June of 1982.

12 Q Between returning in 1979 and your election
13 to the partnership in 1982, I take it you worked
14 continuously as an associate in those intervening
15 years?

16 A Yes.

17 Q Since 1982 up to and including today, have
18 you worked continuously and full-time as a partner of
19 Wilkie, Farr?

20 A Essentially, I took time off in 1992 to go
21 to Little Rock, but I didn't give up my partnership
22 to do that.

1 Q I'll ask you some specific questions about
2 that time also. Mr. Ben-Veniste and I are very
3 sympathetic to that, by the way.

4 Excluding for the moment the time off that
5 you took to spend in Little Rock in 1992, have you
6 been otherwise engaged as a full-time attorney
7 practicing with Wilkie, Farr?

8 A Yes.

9 Q And do you still continue to focus in the
10 corporate area?

11 A Yes.

12 Q Notwithstanding your focus in the corporate
13 area, do you consider yourself to have also
14 litigation experience?

15 A The only litigation experience that I've
16 had is in the context of hostile takeovers,
17 strategizing the hostile takeovers. I do not
18 consider myself a litigator.

19 Q You said a moment ago that you took some
20 time off from your law practice in 1992 to go to
21 Little Rock. Can you say more specifically what you
22 did during that time?

1 A I was a scheduler. I was a director of
2 scheduling.

3 Q For --

4 A For President Clinton, Vice President Gore
5 and their spouses.

6 Q In terms of the month, when in 1992 did you
7 undertake that responsibility?

8 A In July of 1992.

9 Q Is there someone to whom you reported
10 directly in your capacity as a scheduler other than
11 Mr. and Mrs. Clinton, Mr. and Mrs. Gore?

12 A No. I coordinated with lots of people, but
13 I didn't report to anybody.

14 Q And you were physically residing in Little
15 Rock at that time; is that correct?

16 A Yes.

17 Q Did you travel with Mr. and Mrs. Clinton or
18 Mr. and Mrs. Gore during the course of the
19 presidential campaign in 1992?

20 A I traveled on occasion with Mrs. Clinton,
21 but before July of 1992, not while I was in charge of
22 scheduling.

10

1 Q And how long did you have the
2 responsibility for scheduling that you've just
3 described?

4 A I had the responsibility for scheduling
5 through the inauguration, for directing it -- Vice
6 President Gore had his own scheduler. Mrs. Gore had
7 her own scheduler. Hillary Clinton had her own
8 scheduler and the President had, even under him,
9 there was another person. I was running the
10 scheduling department, scheduling an advance
11 department.

12 Q Is it fair to say yours was sort of a
13 supervisory and coordinating role?

14 A Yes. Also a strategic one.

15 Q I was just going to ask you about that.
16 Generally -- I assume from your description this job
17 requires more than filling out a calendar. What was
18 your job?

19 A What was my job?

20 Q For example, you alluded to a "strategic"
21 role. Can you tell us what that means?

22 A Coming up with ideas, working with the

1 people who were working on the presentation of the
2 ideas of the campaign, to identify events that would
3 effectively present those issues.

4 Q After Mr. Clinton's election and the
5 general election in November of 1992, you continued
6 as a scheduler for both Mr. and Mrs. Clinton and
7 Mr. and Mrs. Gore; is that correct?

8 A I continued as the director of scheduling
9 in advance.

10 Q Did you play any other role on what is
11 sometimes referred to as the transition team?

12 A I did whatever they asked me to do.

13 Q Did you play any role, Ms. Thomases, in the
14 selection of officials or employees who would later
15 form the Clinton Administration?

16 A No, I didn't select anybody.

17 Q Whether or not you actually selected
18 anyone, did you play any role? For example, did you
19 consult with Mr. and Mrs. Clinton or Mr.
20 and Mrs. Gore about people who might come to work in
21 the Clinton Administration in Washington?

22 A Yes.

1 Q Now, I think you mentioned a moment ago
2 that you from time to time traveled with Mrs. Clinton
3 during the presidential campaign, but I think you
4 said it was before you took up residence in Little
5 Rock; is that right?

6 A Yes.

7 Q How is it you came to travel with
8 Mrs. Clinton during the campaign?

9 A Mrs. Clinton asked me if I would come and
10 travel with her on occasion, but it was very rare.

11 Q Did you serve in some official or
12 quasi-official capacity when you traveled with her?

13 A No, I did not.

14 Q It was more as a friend?

15 A As a friend.

16 Q How long have you known Mrs. Clinton?

17 A I met -- the President introduced me to
18 Mrs. Clinton in about 1974.

19 Q Can you tell us a little bit about how you
20 came to know Mr. Clinton and then Mrs. Clinton back
21 at that time?

22 A I met him here in Washington, D.C. in

1 August of 1970. We knew some people in common, and
2 we met, and we kind of hit it off, and he was -- this
3 is before he went to Yale Law School.

4 Q Were you employed in August of 1970, or
5 were you also a student?

6 A No, I was employed.

7 Q Tell us where you were employed, if you
8 will.

9 A Lots of different places. I was, in August
10 of 1970, I was working as a part-time professor at
11 Connecticut College in New London, Connecticut, and I
12 was working as an almost full-time consultant for a
13 small New York consulting firm.

14 Q What sort of consulting firm?

15 A Mostly health care.

16 Q And you may have said that you met
17 Mr. Clinton here. By "here," did you mean to refer
18 to Washington, D.C.?

19 A In Washington, D.C.

20 Q What was the occasion of you being here and
21 meeting Mr. Clinton?

22 A We knew some people in common, and we

1 actually physically probably met on a street corner.

2 Q And I think, Ms. Thomases, you were telling
3 me -- I asked you how you came to know the
4 President -- the now President or First Lady in 1974,
5 and part of your response was that you met
6 Mr. Clinton for the first time in 1970. Did you
7 remain in contact with him between 1970 and 1974?

8 A Yes, I did.

9 Q How would you describe your relationship at
10 that time?

11 A Well, I was teaching at Connecticut College
12 in New London, Connecticut and living mostly in New
13 York City, and so I would drive back and forth. And
14 I had a number of friends at Yale Law School at the
15 time, so I would stop there and have dinner with him
16 or any number of other people who were currently at
17 Yale Law School.

18 Q And how did you meet Mrs. Clinton?

19 A He introduced me to Mrs. Clinton, or I
20 think he introduced me to Mrs. Clinton. To the best
21 of my recollection, he introduced me to Mrs. Clinton.

22 Q You think that was in New Haven as well?

1 A No.

2 Q Where was that?

3 A In Arkansas.

4 Q Can you tell us how that happened?

5 A I was flying from one place to another, and
6 I stopped in Arkansas and saw Bill Clinton, at which
7 time he introduced me to Hillary. I knew who Hillary
8 was, and she and I had lots of friends in common, but
9 I had not yet actually met her, although she thinks
10 we actually met.

11 Q She recalls that you maybe met before that
12 time. And for purposes of the next few questions, I
13 don't mean to dwell on particular events, but I do
14 want to get some context for what has been a long
15 relationship, it seems, with the President and
16 Mrs. Clinton. From sort of 1974, is it fair to say
17 that you remained close friends with Mr.
18 and Mrs. Clinton throughout?

19 A Yes.

20 Q How frequently would you have contact
21 with -- perhaps we can divide it before the time of
22 his inauguration in January of 1993. How frequent

1 was your contact with Mr. Clinton?

2 A It just depends. When I was traveling,
3 still traveling for business, I would stop and see
4 him or I would even go out of my way to see them in
5 Arkansas, or they would come to Washington, and I
6 would see them in Washington, or they would come to
7 New York, and I would see them in New York. And in
8 some years, I talked to him more frequently than I
9 saw him. She, in recent years, traveled more than he
10 did. She was in Washington and New York. She and I
11 sat together on the board of the Children's Defense
12 Fund.

13 Q When was that?

14 A Probably -- I think I went on the board in
15 1982. She was already on the board.

16 Q Did Mrs. Clinton play any role in your
17 going on the board of the Children's Defense Fund?

18 A Yes.

19 Q Did she ask you to come on the board?

20 A No, she introduced me to Marian Wright
21 Edelman, who asked me to go on the board.

22 Q After the President and Mrs. Clinton came

1 to Washington in January of 1993, how would you
2 describe your relationship with the President since
3 that time?

4 A We're still friends. I would like to think
5 so.

6 Q And the same would be true of your
7 relationship with Mrs. Clinton?

8 A Yes.

9 Q Do you think of yourself as a close friend
10 of Mrs. Clinton's?

11 A That's really her decision.

12 Q How do you think of it?

13 A I think of her as a close friend of mine.

14 Q And the same would be true of the
15 President?

16 A Again, it would be his choice.

17 Q But you think of it that way?

18 A Yes.

19 Q Have you ever, as an attorney, represented
20 either the President or Mrs. Clinton?

21 A Yes.

22 Q Now, there may be issues of privilege here,

1 so let me go a little bit carefully through them.
2 Just place in time, first of all, when you came to
3 represent them as an attorney and if it's other than
4 both of them, say which.

5 A Well, initially, it was not both of them.

6 Q Who did you represent initially?

7 A It was Mrs. Clinton.

8 Q Do you recall when?

9 A Initially?

10 Q Yes.

11 A I worked with her back in -- I can't
12 remember the precise year right now, but it was on
13 matters related to the Rose Law Firm.

14 Q She was a partner at the Rose Law Firm at
15 that time?

16 A Yes.

17 Q Do you think this representation was before
18 or after 1990?

19 A Before.

20 Q Just to get a ballpark, years before or
21 decades before?

22 A I can't be precise. I cannot remember the

1 precise time.

2 Q And I think you've described the subject of
3 that representation as matters relating to the Rose
4 Law Firm; is that correct?

5 A Yes.

6 Q Other than that subject, have you ever
7 represented Mrs. Clinton in connection with any other
8 matter?

9 A Yes.

10 Q Can you also place that in time for us?

11 A Starting in the late fall of 1991, she
12 hired me.

13 Q In connection with what matter, if you can
14 say?

15 A I can't say. It's a number of matters. I
16 can't say.

17 Q Your understanding was that you were
18 representing Mrs. Clinton personally?

19 A Yes.

20 Q And did you also understand that you were
21 representing Mr. Clinton, or was the representation
22 solely Mrs. Clinton?

20

1 A It depends on the issue.

2 Q The ones you've just been describing in
3 late fall of 1991, the topic of which you can't say?

4 A Some of them are for both of them.

5 Q And would the time frame be the same, late
6 fall of 1991?

7 A Yeah.

8 Q So it's fair to say that sometime in late
9 fall of 1991, you undertook the personal
10 representation of both Bill and Hillary Clinton in
11 connection with a number of matters?

12 A Well, it could have actually been early in
13 1992. I can't be precise about that.

14 Q With respect to these matters that you've
15 been describing, can you tell us, generally speaking,
16 whether we're speaking about a small number of
17 matters, or did you have an ongoing attorney-client
18 relationship with Mr. and Mrs. Clinton?

19 A I represented them on a number of small
20 matters.

21 Q After the election of President and
22 Mrs. Clinton, the general election in November of

1 1992, have you had an occasion to represent as an
2 attorney either of them since that time?

3 A I have continued some of the prior
4 relationship, but I have had no new matter in which I
5 have been engaged.

6 Q As we sit here today, do you still enjoy an
7 attorney-client relationship with the President or
8 Mrs. Clinton in connection with any matter?

9 A Yes.

10 Q Focusing now on the period of time prior to
11 the general election in November of 1990 and your
12 representation of either Mr. or Mrs. Clinton or both
13 prior to that time, had you ever represented
14 President or Mrs. Clinton in connection with the
15 Whitewater Development Corporation?

16 A Yes.

17 Q Can you describe generally the nature of
18 that representation?

19 A Could you ask me something more specific.
20 I mean, I just --

21 Q You didn't represent them in litigation?

22 A No, I did not represent them in litigation.

1 Q And so I guess what I'm asking is whether
2 or not you gave -- without revealing the content of
3 the advice, general business advice, tax advice,
4 acquisition advice or some other kind of counseling?

5 MR. BEN-VENISTE: It would seem that areas
6 of describing the advice might be considered
7 privileged themselves. I take it that's why we've
8 had a sort of pregnant pause here in the deposition.
9 If there's some reason to pierce a privilege, I'm not
10 aware of it, Kip. So I'm not quite sure where this
11 is going.

12 MR. JOHNSON: Off the record.

13 (Discussion off the record.)

14 (The reporter read the record as requested.)

15 THE WITNESS: Yes, with respect to
16 Whitewater Development Corporation, yes.

17 BY MR. JOHNSON:

18 Q The advice being the range of advice I just
19 described?

20 A Yes.

21 Q For purposes of the advice I was just
22 describing, was it Mrs. Clinton or both the President

1 and Mrs. Clinton?

2 A It was both, but the person I dealt with
3 was Mrs. Clinton.

4 Q You understood you were also representing
5 the President?

6 A Yes.

7 Q Did you also advise the President or
8 Mrs. Clinton or both on any matters relating in any
9 way to Madison Guaranty?

10 A To the extent that Madison Guaranty was
11 tangential to Whitewater Development Corporation, I
12 had conversations with them, but I had no
13 representation of them with respect to the actual
14 Madison Guaranty Bank and Trust or whatever.

15 Q Let me ask the same question, perhaps
16 eliciting the same answer with respect to Mr. and
17 Mrs. McDougal. Did you represent them in connection
18 with any matters relating to the McDougals?

19 A No.

20 Q Do you know Mr. and Mrs. McDougal?

21 A I have met them.

22 Q In connection with your representation of

1 the President and Mrs. Clinton, on the topic of
2 Whitewater, did you participate on their behalf in
3 any nonprivileged events, for example, but I don't
4 mean to limit your answer. For example, did you
5 participate in any negotiations on behalf of the
6 Clintons?

7 MR. ROMANO: Hold on.

8 THE WITNESS: Negotiations with whom?

9 BY MR. JOHNSON:

10 Q Any that are not privileged but where you
11 were representing them in connection with
12 Whitewater.

13 MR. ROMANO: Any that are not privileged --

14 MR. JOHNSON: I'm just trying to parse it
15 in a way --

16 MR. ROMANO: Can we go off the record for a
17 second.

18 (Discussion off the record.)

19 BY MR. JOHNSON:

20 Q Let me strike that question because you've
21 answered that there is no privilege.

22 Ms. Thomases, what did you do in connection

1 with your representation of the Clintons in
2 connection with the Whitewater Development
3 Corporation?

4 MR. BEN-VENISTE: Kip, I've got to object
5 to that on the grounds that this phase of our
6 hearings has to do with the handling of Mr. Foster's
7 papers following his death in July of 1993. For us
8 to get into Whitewater at this point in terms of what
9 this witness did at that time regarding the
10 Whitewater Development Company and her advice to the
11 President and First Lady, while probably relevant to
12 other areas of our inquiry, is not, in my view, at
13 this point remotely connected to the area of the
14 hearings which are going to start tomorrow.

15 Now, I have an objection based on the fact
16 that we haven't prepared to get into this area, and
17 it has been something which has arisen before, and we
18 have put our views on the record. Apparently,
19 Mr. Chertoff and Mr. Romano have had a conversation
20 that covered the same ground where Mr. Romano was
21 told by Mr. Chertoff that you weren't going to get
22 into this. I don't think it's appropriate at this

1 point. We've got a lot of things to do before
2 tomorrow's hearing and to start getting into
3 Whitewater with the very last witness being deposed
4 before this hearing starts, I think, is
5 inappropriate.

6 If you can connect with the witness by
7 asking if she's aware of any papers in Mr. Foster's
8 office that related to this period in 1992 during the
9 campaign, then I think we at least have some nexus
10 that would warrant going into it.

11 BY MR. JOHNSON:

12 Q Maybe you could answer the question.

13 MR. ROMANO: I don't think it can be
14 answered. And I object in the form you've asked it
15 because you've asked her to describe everything she
16 has done in relation to the subject matter.

17 MR. JOHNSON: I don't really mean to. I
18 mean to ask generally what did you do, and I agree
19 with Mr. Ben-Veniste this far. I am not here to
20 inquire about the details of the transaction or the
21 Clintons' involvement with the Whitewater Development
22 Corporation. I do wish to inquire in the order I'd

1 like to do it about the knowledge of the
2 participants, about Ms. Thomases's knowledge about
3 Whitewater, about her knowledge of the world of
4 documents that have to do with Whitewater, about her
5 knowledge of what Mr. Foster might have known about
6 those same documents or same information.

7 I don't share Mr. Ben-Veniste's view that
8 we have to prove that a document was in Mr. Foster's
9 office before it becomes a relevant inquiry. In
10 fact, it's entirely possible that people were
11 concerned that documents were in Mr. Foster's office
12 that were never there. To me that would be at the
13 heart of what we're asking as well. I'm not trying
14 to be deceitful about this. I'm trying to find out
15 how everyone got involved in Whitewater.

16 MR. ROMANO: Your hope may be to only get
17 general information but, in fact, what it calls for
18 is very specific information about everything
19 Ms. Thomases did in connection with the subject
20 matter. My conversation with Mr. Chertoff, it was my
21 understanding that in connection with her discussing
22 her knowledge about what was in Mr. Foster's office,

1 you may be permitted to inquire about the state of
2 her knowledge regarding documents that may or may not
3 have been in there. That seems to me a logical way
4 to introduce the subject of Ms. Thomases's knowledge
5 of the history of how these documents might have
6 gotten there.

7 The problem is your questions are broad and
8 if I thought that was the subject that we would be
9 covering, I would have rescheduled this to give us a
10 little more time to prepare for it because I think
11 Mr. Chertoff knows and you know that Ms. Thomases had
12 a substantial degree of involvement with this subject
13 in 1992.

14 MR. JOHNSON: And I'm trying to establish
15 that fact without necessarily establishing that she
16 may or may not have done, I'm trying to establish
17 that she had a substantial degree of involvement with
18 respect to the Whitewater issue in the campaign of
19 1992, and although the lawyers keep saying that, I
20 want Ms. Thomases to say that so we can move forward.

21 MR. BEN-VENISTE: That's a declaratory
22 statement --

1 MR. ROMANO: Would it serve your purpose to
2 do it that way and at least it will fit somewhat
3 within your chronology?

4 MR. JOHNSON: I guess what's troubling with
5 me, apart from the passage of time as we continue to
6 discuss these things, is that perhaps I've
7 misunderstood. I thought you invited me to say to
8 her, when you said there have been no privileges
9 asserted and she would testify on the topic of
10 Whitewater, I thought you invited me to ask what she
11 did in connection with Whitewater. Maybe you had
12 something else in mind when you said that.

13 MR. ROMANO: No, I was trying to avoid
14 spending another hour circumnavigating the privilege,
15 and I thought it would save time to let you know
16 there's a waiver in this area so you wouldn't have to
17 do that, not to inquire -- because frankly I didn't
18 think you would be inquiring about the details of her
19 knowledge about Whitewater or what she did in
20 connection with the subject matter.

21 BY MR. JOHNSON:

22 Q Let me try it a different way.

1 Ms. Thomases. I take it you were very involved in
2 the Whitewater issue in the 1992 campaign; is that
3 correct?

4 A For a period of time.

5 Q During what period of time?

6 A In the first quarter of the year.

7 Q The first quarter of 1992?

8 A '92.

9 Q Who else was involved, to your knowledge,
10 with the Whitewater issue at that time?

11 MR. ROMANO: For the campaign?

12 THE WITNESS: For the campaign, a woman
13 named Loretta Lynch.

14 MR. ROMANO: I'm trying to parse through
15 your questions.

16 MR. JOHNSON: I didn't mean to limit the
17 question. If it's useful to break it down in some
18 way but please don't exclude things from the answer
19 without at least agreeing on that.

20 MR. ROMANO: That was for the campaign,
21 question mark.

22 MR. JOHNSON: No, not just for the

1 campaign.

2 BY MR. JOHNSON:

3 Q Who else, to your knowledge, was involved
4 in Whitewater and if it's useful to break it into
5 categories I'm happy to try. If it's a small number,
6 I'd like to hear them all.

7 A I will try, but I won't necessarily
8 recollect all the people who were involved. That's
9 my concern.

10 MR. BEN-VENISTE: This is the problem of
11 getting into the 1992 campaign as it involves
12 Whitewater. I mean, what is the connection to the
13 Foster papers, if I may ask at 10 minutes of 2:00 on
14 the day before the hearings start?

15 MR. JOHNSON: Oh, gosh, Richard, why are
16 you doing this?

17 MR. BEN-VENISTE: I'm doing it in the hope
18 that we can get on to the relevant area. If we need
19 to get a ruling from the Senators as to whether it's
20 appropriate now to get into the 1992 campaign as it
21 involves Whitewater, then we'll do that. In my view,
22 we can cut through a lot of this to find out whether

1 Ms. Thomases has some knowledge of Mr. Foster's
2 involvement with Whitewater and what documents, if
3 any, he may have had in his office.

4 MR. JOHNSON: It's entirely possible that
5 she has knowledge directly about his involvement.
6 It's entirely possible that she has knowledge of
7 other people's involvement, who the Senators might
8 want to ask about their knowledge of Mr. Foster's
9 involvement. I don't think we're confined to asking
10 Ms. Thomases ultimate questions. If I ask you did
11 anything bad happen and you say no, we can all go
12 home and everybody will be happy about it. I would
13 like more detailed information. I don't think the
14 question is unreasonably broad. I think the only
15 thing that's taking time is the continued dialogue
16 about it. If we can lay the foundation of knowledge,
17 we can move beyond this, but I did want to hear it.

18 MR. ROMANO: I know you want to hear it and
19 had we been alerted to this, I'm certain we'd be
20 prepared to discuss it in detail. My problem is when
21 you do focus on the -- this period of time, and I
22 didn't really mean to limit it to the campaign, but I

1 also wanted to limit it to this period of time, that
2 entire subject area we thought was one that wasn't
3 going to be inquired into.

4 I do think that if you focus on the two
5 days that I thought we were going to talk about here,
6 you may find, working backwards, that Ms. Thomases
7 has some knowledge or some belief about what some of
8 those documents, how they might have gotten there,
9 but to work from it chronologically, unfortunately,
10 unless you're going to be very focused on your
11 questions, it's inevitably going to be putting her in
12 a position of incomplete answers and that's my
13 concern.

14 MR. JOHNSON: I'm clear you've now said for
15 the third time she has information to give with
16 respect to the three days and let me try to get to
17 it.

18 BY MR. JOHNSON:

19 Q Let me state for the record, Ms. Thomases,
20 that I understand that in asking you these broad
21 questions that you have not had an opportunity to
22 prepare nor was it your or your counsel's intention

1 to testify about the details of the Whitewater
2 transaction here today.

3 My questions do attempt to identify the
4 basis of knowledge of yourself and others. I don't
5 want to be limited just to Mr. Foster. I understand
6 that you may have better or different recollections
7 when you've had an opportunity to prepare. I just
8 want to have some basis for further questioning of,
9 knowing what it is you happen to recall off the top
10 of your head today. I will state for the record that
11 you can't be impeached with this question if you have
12 a different recollection in the future.

13 But I just want to know, other than
14 yourself, who was involved with Whitewater that you
15 know of, and I'll take your counsel's suggestion. If
16 it's limiting in some useful way to say in the
17 campaign in 1992, tell me the names you recall.

18 MR. BEN-VENISTE: And then you'll move into
19 the relevant area?

20 MR. JOHNSON: Richard, really, I'll go in
21 the direction I believe the deposition ought to go.
22 If counsel has a problem with it --

1 MR. BEN-VENISTE: Why don't we break? If
2 you're going to ask what each of these individuals'
3 knowledge was to the best of this witness's
4 recollections about their involvement in Whitewater,
5 then I am going to ask for a ruling.

6 MR. JOHNSON: Do you want to break now or
7 do you want her to answer the pending question?

8 MR. BEN-VENISTE: If you will answer my
9 question, if that's what you're going to get into, we
10 might as well get a ruling.

11 MR. JOHNSON: I'm very happy. Are you
12 available into the evening and tomorrow because we
13 can have a ruling on this, but I'm going to --
14 Richard, for some reason for the first time in our
15 depositions, you think you have a right to ask me
16 questions about future questions. I intend to ask
17 the questions that I believe are relevant. If at any
18 time the witness chooses not to answer a question,
19 she has that right. But I can't sit here and
20 negotiate with the lawyers --

21 THE WITNESS: Do you have any name you want
22 me to specifically --

1 BY MR. JOHNSON:

2 Q Vince Foster.

3 MR. BEN-VENISTE: Good question.

4 BY MR. JOHNSON:

5 Q I'm going to ask anyone else, but if you
6 want to do it name by name.

7 A Will you repeat the question with respect
8 to Vince Foster?

9 Q Sure. What involvement, if any, did
10 Mr. Foster have with respect to the Whitewater issue
11 in the 1992 campaign?

12 A None that I recollect.

13 Q What about Mr. Hubbell?

14 A Mr. Hubbell -- I don't mean to hide behind
15 my bad memory. I really mean this.

16 Q That's why I tried to ask it generally.

17 A But I mean, I can't --

18 Q Ms. Thomases, in any way that's helpful to
19 you, I just want to know the names that come to your
20 mind in the 1992 campaign as having been involved in
21 Whitewater. You've said already you didn't think
22 Mr. Foster was.

1 MR. ROMANO: Can I make a suggestion?
2 Would it help you at all if Susan, with all of the
3 suggested language you provided us, the use to which
4 this could be made, put a declarative statement on
5 the record that succinctly summarizes her involvement
6 in 1992, which I think would provide you the
7 predicate that you're seeking and save the rest for
8 later?

9 MR. JOHNSON: I'd be so grateful... In fact,
10 I'd be surprised if I didn't ask that question
11 already.

12 MR. ROMANO: Can we move on?

13 THE WITNESS: You were asking me who --

14 MR. ROMANO: You were struggling with
15 privilege also.

16 THE WITNESS: You were asking me who --

17 BY MR. JOHNSON:

18 Q Well, listen, it's not important --

19 MR. ROMANO: That would provide the
20 predicate for her knowledge and we can move on.

21 MR. JOHNSON: I think that's right.

22 THE WITNESS: I had a role in helping to

1 organize and get together the information on
2 Whitewater, primarily in response to a press inquiry
3 in which they wanted clarification of what the facts
4 were, and in that context, during the campaign, I
5 became involved.

6 BY MR. JOHNSON:

7 Q Who asked you to do that?

8 A Mrs. Clinton asked me to get involved, and
9 I'm hesitating only because I think that there was an
10 inquiry from someone who was working in the campaign
11 on the issue.

12 Q Someone whose name you don't now recall?

13 A Whose name I do not specifically recall.

14 Q And when you said there was a press
15 inquiry, are you referring to the Jeff Gerth inquiry
16 from The New York Times or some other inquiry?

17 A I believe it was the Jeff Gerth inquiry.

18 Q And you and perhaps others --

19 A Inquiries.

20 Q And your role was to gather information to
21 assist in the response to that inquiry? Have I said
22 that fairly?

1 A Yes.

2 Q And did that include the gathering of
3 documents as well?

4 A I would say to facilitate the gathering of
5 documents. I didn't actually do much gathering of
6 documents.

7 Q And your best recollection is that
8 Mr. Foster was not himself involved in this role that
9 you have described to me?

10 A To my best recollection, no.

11 Q When did you first come to know Mr. Foster,
12 if ever?

13 A I met Mr. Foster sometime prior to 1978.

14 Q How did you meet Mr. Foster?

15 A I don't remember precisely.

16 Q Was it in a professional capacity, or was
17 it social?

18 A It was in a political capacity initially --
19 or social capacity.

20 Q Do you think it was in connection with then
21 Governor Clinton's election campaign or reelection
22 campaigns or some other capacity?

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1 A I believe it was in the events surrounding
2 his life when he was living in Arkansas.

3 Q Did you become personal friends with
4 Mr. Foster in 1978?

5 A I didn't become personal friends with him.
6 It was the beginning of what became a personal
7 friendship.

8 Q At the time of Mr. Foster's death in July
9 of 1993, you and Mr. Foster were personal friends at
10 that time; is that correct?

11 A I believe we were.

12 Q And had you been personal friends for some
13 period of time prior to that?

14 A Yes.

15 Q Some number of years, I take it?

16 A Yes.

17 Q Ms. Thomases -- strike that, Julie.

18 Did you ever become aware of what, if any,
19 role Mr. Foster has played in connection with
20 Whitewater in his life?

21 A Could you repeat that.

22 Q Yes. Did you ever become aware of what, if

1 any, role Mr. Foster himself played in connection
2 with Whitewater Development Corporation?

3 A Could you be more specific, because I mean,
4 I'm not playing games, but I want to know in what
5 period of time.

6 Q When did you first become aware that he had
7 any role, if ever, in Whitewater?

8 MR. BEN-VENISTE: By "in Whitewater," you
9 mean in advising or performing any professional
10 service in connection with the Whitewater
11 investment?

12 MR. JOHNSON: Well, I don't mean to be
13 quite that precise. I'd be comfortable in excluding
14 press reports or something.

15 MR. ROMANO: Whitewater has come to mean so
16 many vague things to so many people.

17 BY MR. JOHNSON:

18 Q For purposes of my questions, and I've
19 lapsed into that generality as well, but typically,
20 when I say "Whitewater Development Corporation," I'm
21 referring specifically to the Whitewater Development
22 Corporation and not to the generic Whitewater, which

1 has a broader umbrella.

2 A Could I talk to him for a second?

3 Q Sure.

4 (Witness conferred with counsel.)

5 THE WITNESS: To the extent that -- I'm
6 trying to be cooperative. I'm not playing games with
7 you. To the extent that Madison Guaranty and the
8 things that had to do with Madison Guaranty and the
9 news inquiries that were being made about it had
10 something to do with Whitewater Development
11 Corporation, I became aware. A conversation that I
12 had with Bill Kennedy at the very beginning suggested
13 that the Rose Law Firm had a legal involvement in
14 this, which I had not been previously aware of and
15 it's in that context that Vince Foster's name came up
16 in relation to Whitewater.

17 BY MR. JOHNSON:

18 Q Your best recollection is Mr. Kennedy may
19 have told you that Mr. Foster had --

20 A Yes.

21 Q And this would have been in connection with
22 what you've described as your effort to assist in

1 responding to press inquiries; is that correct?

2 A Yes.

3 Q So sometime in 1992?

4 A Yes.

5 Q Now, Mr. Foster came to Washington after
6 President Clinton's election and inauguration in
7 January of 1993 to serve as the deputy White House
8 counsel. Do you recall that?

9 A Yes.

10 Q Did you play any part in asking Mr. Foster
11 to assume that job?

12 A I played no part in asking Mr. Foster to
13 assume that job.

14 Q In that job, he continued to -- I'm
15 suggesting to expedite, not to place testimony, so if
16 you disagree with it, tell me I'm wrong -- he
17 continued to work on some Whitewater-related matters
18 on behalf of the administration after he assumed his
19 job as deputy. Were you aware of that?

20 MR. BEN-VENISTE: The problem with the
21 question, again noting the pregnant pause --

22 MR. ROMANO: We appreciate that to speed

1 this along.

2 MR. BEN-VENISTE: -- is that there's a
3 suggestion of continuation. It may have been an
4 issue that was concluded and they may have picked
5 that up again.

6 MR. JOHNSON: That's a good point. I
7 agree.

8 BY MR. JOHNSON:

9 Q Whether or not he continued anything, he
10 was involved as deputy White House counsel in certain
11 matters related to the Whitewater Development
12 Corporation. Were you ever aware of that?

13 A Yes, I was.

14 Q How did you become aware of that?

15 A I can't precisely recollect how I became
16 aware of that. Whether it was Mr. Foster who told me
17 or Bernie Nussbaum who told me, but I became aware.

18 Q Did you yourself ever discuss Mr. Foster's
19 involvement with Whitewater Development Corporation
20 personally with Mr. Foster?

21 A In a limited way, yes.

22 Q What do you recall about those

1 conversations?

2 A I don't know whether this is complete, but
3 I remember them mostly in the context of preparing
4 the Clintons' tax returns.

5 Q Do you remember any more specifically what
6 Mr. Foster may have said to you about that?

7 A I don't remember at this time anything more
8 specific.

9 Q Do you remember anything you may have said
10 to Mr. Foster about that?

11 A Nothing that I can recall right now.

12 Q To the best of your recollection, did
13 Mr. Foster ever say or suggest to you that he feared
14 an IRS audit if a loss was claimed in connection with
15 Whitewater?

16 A I don't remember him saying that
17 specifically.

18 Q Generally, did you and he ever discuss
19 whether or not the Clintons could or should claim a
20 tax loss on the Whitewater tax returns, claim a loss
21 on the Whitewater tax returns?

22 A It wasn't -- we didn't discuss it in quite

1 the way you're phrasing it.

2 Q Just generally, what do you recall?

3 A I recall --

4 MR. ROMANO: Off the record for a second.
5 (Discussion off the record.)

6 (The reporter read the record as requested.)

7 THE WITNESS: I don't think I can really
8 recollect specifically the specifics of such a
9 discussion, but I am willing to tell you what I
10 generally recall in that area in an effort to
11 facilitate us moving forward with this. Vince and I
12 discussed the importance of clarifying what their tax
13 obligations were and getting the taxes paid without
14 reference to losses or not losses or any specifics of
15 the --

16 BY MR. JOHNSON:

17 Q You just don't recall any discussions about
18 losses?

19 A Yes.

20 Q Did Mr. Foster ever say or suggest to you
21 that he was unable to document the Clintons' claim
22 that they had lost money in Whitewater?

1 A He did not specifically do that, but we
2 concluded on both of our experience with the
3 documentation that there was lots of imperfect
4 recordkeeping.

5 Q As best you recall, your discussions were
6 about the imperfections of the records and not the
7 accuracy of the statements?

8 A The quality of the records was a lot of our
9 discussion.

10 Q Did you and Mr. Foster ever discuss whether
11 or not it was possible on the basis of the records --
12 strike that, Julie.

13 Did you and Mr. Foster ever discuss whether
14 or not the Clintons could establish any basis for
15 their investment in Whitewater?

16 A When you say "basis" --

17 Q Tax basis.

18 A To the best of my recollection, I don't
19 believe that we discussed it in the way that tax
20 lawyers discuss basis.

21 Q Do you recall it being discussed in any
22 other way?

1 A We discussed his need to get good tax
2 assistance and helping him with this and then to rely
3 on their advice, whatever it was. I don't presume to
4 be a tax expert, and I urged him not to either.

5 Q Did you and Mr. Foster ever discuss the
6 accuracy of public statements made by the Clintons or
7 anyone else connected with the Clinton campaign that
8 the Clintons had lost money in their Whitewater
9 investment?

10 A We discussed the issues as they had arisen
11 in the context of the campaign.

12 Q What do you recall about those discussions?

13 A Almost nothing right now and not that I
14 couldn't if I spent some time thinking about it, but
15 I haven't thought about it.

16 Q Did you and Mr. Foster ever discuss the
17 potential of an IRS audit in connection with the
18 Whitewater Development Corporation?

19 A I don't believe so. I'm not saying that we
20 didn't, but I have no recollection.

21 Q Did you ever discuss that topic, the
22 potential of an IRS audit with anyone other than

1 Mr. Foster relating to the tax returns that

2 Mr. Foster was preparing?

3 A I do not believe I did.

4 Q Did you ever discuss it with Mrs. Clinton?

5 A I do not believe I discussed it with

6 Mrs. Clinton.

7 Q What about with Mr. Nussbaum?

8 A I don't think -- I don't recollect

9 discussing that issue with Mr. Nussbaum.

10 Q And I take it you also don't recall ever

11 discussing that with the President?

12 A I never discussed that, to my recollection,

13 with the President.

14 Q Now, Ms. Thomases, let me focus what

15 counsel might suggest for the first time on some

16 particular events that occurred. I realize there's

17 some pain attendant to this, so let me assure you in

18 advance, my questions are not inquiring of the

19 emotional content of these events. And to the extent

20 that conversations you may have had are purely

21 emotional or grief as they surround Mr. Foster's

22 death, don't feel as if you need to tell me about

50

1 those, but I do need to ask what other kinds of

2 conversations may have occurred.

3 Where were you on July 20, 1993?

4 A You want the whole day?

5 Q Well, where were you on the evening of July

6 20, 1993?

7 A Starting at what time? I mean that as a

8 serious --

9 Q Were you at work on that day?

10 A I was working. I was not in my New York

11 office on that day.

12 Q What city were you in?

13 A I left New York and went to Pennsylvania

14 that day.

15 Q Where in Pennsylvania were you?

16 A I had a series of business meetings in

17 suburban Philadelphia.

18 Q Did there come a time on the evening of

19 July 20 or early morning hours of July 21st that you

20 learned that Mr. Foster's body had been found?

21 A I returned to New York the evening of the

22 20th, and I was at my home when I learned that

1 Mr. Foster's body had been found.

2 Q Approximately what time did you learn that
3 Mr. Foster's body had been found?

4 A Sometime in the area of 9:30, 10:00.

5 Q How did you learn that?

6 A Hillary Clinton called me.

7 Q What makes you think it was in the area of
8 9:30 or 10:00? How are you able to place the time?

9 A I had arrived home from Philadelphia
10 approximately -- I don't know for sure -- but
11 approximately 8:30 and I hurried home so I could see
12 my son before he went to bed, and he had just sort of
13 gotten ready to go to sleep when Hillary Clinton
14 called me.

15 Q Did Mrs. Clinton call you on a regular
16 telephone or on a cell phone -- I mean in your home?

17 A In my house she called me on what I think
18 is a regular telephone.

19 Q She didn't call you on your cellular
20 telephone?

21 A On my cellular telephone? I don't know.
22 I've had a cellular telephone in my life, but I don't

1 tend to use it around my house. In fact, I don't use
2 it at all anymore.

3 Q What do you recall about your conversation
4 with Mrs. Clinton that evening?

5 A It was sad. I expressed regret that I
6 somehow -- because I used to talk to Vince fairly
7 regularly, had not adequately picked up on the fact
8 that he must have been in great distress.

9 Q Do you recall anything else?

10 A We talked about the kids.

11 Q Mr. Foster's children?

12 A Mr. Foster's children, and his wife and how
13 painful it was then for them, but it would be for the
14 rest of their lives.

15 Q Anything else that you recall?

16 A I mean, we talked about how her father was
17 and how she was doing.

18 Q Did you have any understanding in this
19 telephone call where Mrs. Clinton was when she phoned
20 you?

21 A I believe that she was in Little Rock.

22 Q What's the basis of that belief?

1 A Because she had been in Little Rock
2 visiting with her father who had been very ill.

3 Q Did Mrs. Clinton say how she had been
4 informed of Mr. Foster's death?

5 A I don't remember her telling me
6 specifically how she heard it, except that she had
7 received a phone call.

8 Q Did she say from whom?

9 A I don't specifically recall from whom she
10 received a phone call.

11 Q Did she indicate to you whether or not she
12 had spoken to anyone else, other than obviously in
13 the phone call that she received, prior to calling
14 you?

15 A She didn't tell me that she had had a
16 conversation with anybody else. I'm not saying that
17 she didn't have a conversation with anyone else. I
18 just don't remember her telling me.

19 Q Do you have an impression one way or the
20 other about whether or not you were the first person
21 she called?

22 A I have no -- it didn't occur to me to ask

1 that question, and I don't know.

2 Q Was there any discussion in that telephone
3 conversation about whether or not the President had
4 been informed of Mr. Foster's death?

5 A I don't know. I don't remember whether we
6 had that discussion. I remember my husband had been
7 watching him on television that evening, and I don't
8 know whether --

9 Q By "him," you mean the President?

10 A The President. I don't know.

11 Q It might help us place in time a little bit
12 the telephone. Was your husband still watching the
13 television when you received the telephone call?

14 A I don't specifically recollect that.

15 Q Was there any discussion in that telephone
16 call with Mrs. Clinton about whether or not a suicide
17 note had been found?

18 A To the best of my recollection, there was
19 no discussion of a suicide note in that call.

20 Q Was there any -- do you recall anything
21 else about the telephone call?

22 A I remember that Hillary Clinton asked me

1 that -- first of all, she asked me if I was going to
2 Washington as I regularly did on Wednesdays, whether
3 I was going to Washington the next day. And when I
4 told her I expected to be going to Washington, but I
5 first had to go to my office in the morning, she
6 asked me if I would make a special effort to go to
7 see the President and to see Maggie Williams just
8 because of how much they cared about Vince Foster and
9 how important it would be to them to see me and talk
10 to me about his passing.

11 Q Let me see if I've got this right.
12 Mrs. Clinton asked you, while in Washington on
13 Wednesday the 21st, to visit with the President and
14 Ms. Williams; is that correct?

15 A Yes.

16 MR. BEN-VENISTE: Aside from the syntax,
17 that's the substance. The question seemed to imply
18 that the conversation occurred on Wednesday.

19 BY MR. JOHNSON:

20 Q On the evening of the 20th in the telephone
21 call we've been describing, she asked you whether you
22 were going to Washington the next day?

1 A Yes.

2 Q And if so, would you please visit with the
3 President and Mrs. Williams?

4 A Yes.

5 Q Did she say any more about why?

6 A She just said how emotional they would be
7 and would I please go and try to give them some
8 solace and everything. It was mostly personal in
9 flavor.

10 Q Do you remember anything else about the
11 telephone conversation?

12 A Nothing -- I mean, nothing specific.

13 Q I meant to include this in the broader,
14 earlier question about the suicide note, but in the
15 event that I didn't, let me ask it more
16 specifically. Did you and Mrs. Clinton discuss
17 whether or not a suicide note should be looked for?

18 A I can't remember any -- I cannot remember
19 any discussion of a suicide note.

20 Q In this telephone conversation with
21 Mrs. Clinton on the evening of the 20th --

22 A You know, I'm not saying that it didn't

1 take place, but I don't remember.

2 Q You have no recollection today of it?

3 A No.

4 Q Do you remember at the conclusion of the
5 conversation having an impression one way or another
6 about whether a note had been found?

7 A I have to tell you, I don't know that
8 either of us felt that it was terribly -- it was not
9 the center of what we were thinking about or talking
10 about.

11 Q During the course of this conversation with
12 Mrs. Clinton on the evening of the 20th, did you
13 discuss with her at all the contents of Mr. Foster's
14 office?

15 A No, we did not, to the best of my
16 recollection, discuss the contents of his office.

17 Q Did you discuss with her whether or not it
18 would be appropriate to seal or secure Mr. Foster's
19 office in this telephone call?

20 A We didn't have a conversation of sealing or
21 doing anything to the office. Our conversation was
22 mostly about emotions and personal matters and family

58

1 and religion and very personal things, not about --
2 not lawyer things.

3 Q All right. What's the next thing -- strike
4 that, Julie.

5 Do you recall anything else other than the
6 emotional sorts of things you've just described about
7 your conversation with Mrs. Clinton at 9:30 or 10:00
8 on the evening of the 20th that we haven't talked
9 about?

10 A No, I can't think of anything we didn't
11 talk about.

12 Q What's the next thing, Ms. Thomases, that
13 you recall happening?

14 A He's telling me I have to talk more loudly
15 for you. I'll try.

16 Q What's the next thing you recall happening
17 on the evening of the 20th after your telephone call
18 with Mrs. Clinton?

19 A I remember talking to my husband.

20 Q Anything else?

21 A I don't know. I remember -- I had some
22 work that I had to finish that was due the next

1 morning, and I remember trying to figure out how I
2 was going to get refocused on my work.

3 Q Let me show you a document that's been
4 marked as Z000655, which I will represent to you has
5 been represented to us as the pager records of Maggie
6 Williams. First question, Ms. Thomases, will be
7 whether or not you've ever seen this document before?

8 A No, I've never seen this document before.

9 Q I'll try and read it --

10 A I see only my name.

11 Q I think what this document indicates --

12 MR. ROMANO: What number is that?

13 MR. JOHNSON: 000655. It indicates that
14 Ms. Williams received a pager message at 12:15 a.m.,
15 shortly after midnight in the early morning hours of
16 July 21st to call Susan Thomases.

17 BY MR. JOHNSON:

18 Q Do you remember -- does this refresh your
19 recollection about whether you placed a call to
20 Ms. Williams on the late evening of the 20th or early
21 morning hours of the 21st?

22 A It doesn't refresh my recollection but

1 given our relationship, it's totally plausible that I
2 could have called her.

3 Q Do you recognize the telephone number on
4 this document as your own telephone number?

5 A Yes.

6 Q Is that your home telephone number?

7 A That's one of my home telephone numbers.

8 Q So you don't independently recall paging
9 Ms. Williams, but it wouldn't surprise you if you
10 did?

11 A That's right.

12 Q Did you speak with her?

13 A I don't recollect speaking with her that
14 night. That's not to say that she didn't call me
15 back and I didn't speak to her, but I have no
16 independent recollection of having spoken with her
17 that night.

18 Q Did you speak with anyone else that night?
19 And by that "night," I don't mean to draw a bright
20 line at midnight.

21 A I appreciate that.

22 MR. ROMANO: Before she went to sleep.

1 THE WITNESS: Or even after I went to
2 sleep. I don't always get to sleep. I have no clear
3 recollection or really any recollection of speaking
4 to anyone other than my husband, but it's totally
5 possible that I spoke to Maggie Williams or any
6 number of other people that night. I just don't
7 recollect.

8 BY MR. JOHNSON:

9 Q Other than the one telephone call with the
10 First Lady that we've described, did you speak with
11 the First Lady further on the evening of the 20th or
12 early morning hours of the 21st?

13 A I don't believe that I spoke with her early
14 on the 21st.

15 Q In the conversation with Mrs. Clinton that
16 you have described, were you and she, to the best of
17 your knowledge, the only ones on the telephone?

18 A To the best of my knowledge, yes.

19 Q And you didn't speak with anyone else
20 during that same telephone call, for example, she
21 didn't hand the phone to anyone else or anything like
22 that?

1 A No.

2 Q At some point, I take it you at least tried
3 to go to sleep on that evening.

4 A Uh-huh.

5 Q What's the next thing you recall doing,
6 Ms. Thomases?

7 A I got up the next morning and I got ready
8 to go to my office in New York.

9 Q And then what happened?

10 A I had some work to do, which is a very
11 specific task to do that had a due date and had to
12 get it done. And after that, I went to Washington.

13 Q Do you recall what time of day that was?

14 A I would say sometime after lunchtime.

15 Q Before you left to go to Washington from
16 New York, did you have any conversations with anyone
17 relating to Mr. Foster or his death?

18 A I don't specifically recollect any
19 conversations that morning with anyone, but I could
20 have had a conversation with anyone who might have
21 called about it. I just -- I was very, very busy
22 with a work project.

1 Q As we sit here today, you don't have any
2 recollections of telephone conversations on that
3 topic?

4 A No.

5 Q And then sometime after lunch, you
6 physically traveled to Washington?

7 A Uh-huh.

8 Q How did you travel?

9 A By plane.

10 Q What's the next thing that you recall --
11 actually, Julie, strike that.

12 We're referring now to Wednesday, July
13 21st; is that correct?

14 A Yes.

15 Q Let me show you documents that have been
16 produced to us by the White House, and we've been
17 informed that these are the telephone messages of
18 Bernard Nussbaum. Counsel, let me just state what
19 I'm hoping to refresh Ms. Thomases's recollection
20 about. I have three documents numbered Z000879, 880
21 and 881.

22 The first one, Ms. Thomases, does not refer

1 to you, but it's dated July 21st at 11:00. It's a
2 telephone message to Melanie from John Podesta. The
3 next document is an undated -- apparently undated
4 phone message and without a particular addressee, but
5 it says "Susan Thomases on her way down," and then
6 the one following that says "to Maggie, July 21,
7 11:15, Susan Spencer."

8 The reason I did that was these were the
9 order that these were produced to us and the first
10 one is the 11:00 in the morning and the next one is
11 11:15 in the morning. Does that refresh your
12 recollection about whether or not you placed any
13 calls to Washington or to the White House to tell
14 people that you were on your way down?

15 A It doesn't refresh my recollection, but
16 it's totally plausible that I made such calls or had
17 my secretary make such calls.

18 Q Okay. I think you told me you flew to
19 Washington?

20 A Yes.

21 Q Do you recall what time of day you arrived
22 in Washington on the 21st?

1 A Sometime in the afternoon.

2 Q What did you do when you got to Washington?

3 A I went immediately to the White House, to
4 the best of my recollection. I went immediately to
5 the White House.

6 Q Did you travel alone?

7 A Yes, to the best of my recollection, I
8 traveled alone.

9 Q What did you do when you got to the White
10 House?

11 A I got there and my intention was to try to
12 see the President and Maggie, and hopefully to see
13 Mack McLarty and Bernie Nussbaum because those were
14 the people who I felt would be most emotionally
15 involved in Vince's suicide so that's what I tried to
16 do.

17 Q How did you try and do that?

18 A I went looking for them.

19 Q Did you at the time, perhaps even today,
20 did you have a White House pass?

21 A At that time, I don't recollect whether I
22 still had a White House pass at that time. I don't

1 recollect, but if I didn't, I would have called the
2 First Lady's office, then asked someone there to come
3 wave me in.

4 Q And you said you went looking for them. Do
5 you mean that literally, you walked into the west
6 wing and looked for them?

7 A Yes.

8 Q Did you find any of them?

9 A I don't specifically recollect whether I
10 found them. I found -- people were milling around
11 because they had come from this announcement -- group
12 announcement that had been made by the President and
13 Mack McLarty and Bernie about Vince Foster's suicide.

14 Q Did you speak with the President sometime
15 after your arrival in Washington on the 21st?

16 A Not initially, but I eventually spoke to
17 the President.

18 Q What time of day do you recall speaking
19 with the President?

20 A Late in the afternoon.

21 Q Of the 21st?

22 A Of the 21st because I went back to my

1 office -- not back to. I went to my office because
2 the reason I had come to Washington was to do some
3 work. Funny -- so I actually went to my office to
4 complete the work that I had come to do.

5 Q You were at the White House for some period
6 of time and then you left to go to your Washington
7 office?

8 A Uh-huh.

9 Q How long were you at the White House the
10 first time on the 21st?

11 A I can't exactly remember.

12 Q Did you actually see or speak with anyone
13 about Mr. Foster's death while there the first time?

14 A I can't specifically recollect, but I'm
15 sure that every person I bumped into said something
16 about Vince Foster's suicide.

17 Q What about Ms. Williams, do you remember
18 whether or not you spoke with Ms. Williams the first
19 time you were there that day?

20 A I don't know for sure whether I spoke to
21 her at that time or later in the day.

22 Q You are sure you spoke to her on that day,

1 you just can't say at what time?

2 A I can't be sure, but I have a recollection
3 of having spoken to her.

4 Q Did you speak to Mr. McLarty?

5 A I have a recollection of speaking to
6 Mr. McLarty either that day or the day after.

7 Q And what about Mr. Nussbaum?

8 A The same.

9 Q Either on the 21st or the 22nd?

10 A Or the 22nd.

11 Q Let me focus on your conversations with
12 Mr. Nussbaum either on the 21st or 22nd of July
13 1993. On how many occasions did you speak with
14 Mr. Nussbaum?

15 A I have no idea how many.

16 Q Do you know whether or not it was more than
17 one time?

18 A It could have been.

19 Q What do you recall, if anything, about your
20 conversations with Mr. Nussbaum?

21 A Well, we talked about how sad it was and
22 how -- I mean, I could go through the whole thing

1 about all the reasons why I felt I hadn't sort of --
2 I should have, being the kind of person I believe
3 myself to be, I should have noticed that Vince was in
4 some pain. He felt the same way.

5 Q I should have asked you, by the way, and I
6 neglected to. Do you have any recollection of
7 speaking with the First Lady on the 21st of July?

8 A On the 21st?

9 Q The day after Mr. Foster's death.

10 A I have no specific recollection -- I have
11 no specific recollection, but I have reason to
12 believe that sometime late in that day before I went
13 to bed, I tried to reach her. I don't know whether I
14 was successful.

15 Q I'm sorry. I just neglected to ask that
16 before. I think what I was asking you about was what
17 you remembered about your conversations with
18 Mr. Nussbaum, either on the 21st or 22nd of July, and
19 you were giving me your recollection as you were
20 talking about your conversations about the reasons
21 why Mr. Foster might have done what he did?

22 A Yes.

70

1 Q Do you recall anything else?

2 A When was this, on the 21st?

3 Q In your conversations with Mr. Nussbaum
4 either on the 21st or 22nd.

5 A I don't have a perfect time sequence of all
6 this. I mean, I'm trying to recollect it in terms of
7 what I -- the things that I know I did those days,
8 but I don't specifically remember -- I mean, I had a
9 number of conversations with him in those two days,
10 so if there's something --

11 Q You do recall there was more than one
12 conversation?

13 A There was more than one conversation.

14 Q Do you recall that those conversations took
15 place on both the 21st and the 22nd, or are you
16 unable to say for certain?

17 A I can't say for certain, but it could have
18 been. I could have talked to him on both days.

19 Q In any of your conversations with
20 Mr. Nussbaum on the 21st or 22nd, did you discuss
21 Mr. Foster's office?

22 A At some point. I just don't have a clear

1 sense of timing, as you obviously do.

2 Q I actually don't.

3 A I mean, I'm trying to recreate the days of
4 the week and I know what else I had to do on the
5 22nd. I'm trying to think about whether or not I
6 spoke to Bernie on the 22nd.

7 Q I might be able to help a little bit.

8 Don't let me mislead you. We have information that
9 the contents of Mr. Foster's office were reviewed by
10 Mr. Nussbaum in the presence of others in the early
11 afternoon of the 22nd. So maybe I can focus the
12 question a little more narrowly and be helpful.

13 Prior to the early afternoon of the 22nd,
14 did you have any conversations with Mr. Nussbaum
15 about Mr. Foster's office?

16 A I recall having a conversation with him
17 prior to my going back to New York on the 22nd, which
18 would have been after lunch.

19 Q So is it your best guess it would have been
20 sometime either on the 21st or the morning of the
21 22nd?

22 A Yes.

1 Q What do you recall about that conversation?

2 A With respect to documents?

3 Q With respect to Mr. Foster's office.

4 A Well, Bernie talked about how he was going
5 to make sure that the privileged documents of the
6 presidency were treated appropriately, that he was
7 going to give all of Vince's personal papers to
8 Lisa's lawyer and to the Foster estate lawyer, and
9 that he was going to have David Kendall come take
10 control of the personal papers of the President and
11 Hillary Clinton.

12 Q Do you recall anything else?

13 A Essentially, no.

14 Q Now, at the time you were speaking with
15 Mr. Nussbaum, do you know whether or not he had
16 already -- strike that, Julie.

17 Did Mr. Nussbaum state to you whether or
18 not he had ever been into Mr. Foster's office after
19 Mr. Foster's death on the 20th during this
20 conversation you've just been describing?

21 A Mr. Nussbaum certainly implied that he had
22 been in Mr. Foster's office.

1 Q Why do you say that?

2 A That's the implication that he left.

3 Q You don't remember any more specifically
4 his words?

5 A I don't remember anything more specifically
6 than that.

7 Q Can you state today what, if anything, he
8 said that created the implication?

9 A No. You know, so much press has been out
10 there on all of this, it's very hard for me to
11 separate it all out.

12 Q But you do recall that you had the
13 impression somehow that he had been in Mr. Foster's
14 office?

15 A Yes, at some point.

16 Q Still focusing on periods of time after
17 Mr. Foster's death but prior to your return to
18 New York after lunch on the 22nd, had you had any
19 conversations with Mrs. Clinton other than the one
20 you described having taken place in your home on the
21 evening of the 20th?

22 A As I said --

1 MR. ROMANO: I'm sorry, did you finish your
2 question?

3 MR. JOHNSON: Yes.

4 THE WITNESS: As I said, it is highly
5 probable, although I can't specifically recall, that
6 I called Mrs. Clinton when I got to where I was
7 staying on the night of the 21st. As I said, I have
8 no specific recollection, but it's what I would have
9 done.

10 BY MR. JOHNSON:

11 Q You would be surprised to learn if you
12 didn't do that?

13 A If I didn't do that, I would be surprised.

14 Q Do you recall anything at all about the
15 conversation, if there was one?

16 A No.

17 Q You don't have an impression one way or the
18 other of you saying something to her, her saying
19 something to you?

20 A No, I have no specific recollection. I
21 think I probably just kind of reported how everybody
22 was feeling.

1 Q You do recall having a conversation with
2 Mr. Nussbaum sometime before returning to New York --
3 sometime before you returned to New York on the early
4 afternoon of the 22nd about the contents of
5 Mr. Foster's office; is that correct? You described
6 somewhat your recollections about that?

7 A Yes.

8 Q How did that come up?

9 A I don't know. I mean, Bernie was in an
10 emotional state, and he wanted to kind of do things
11 the way he thought was considerate and responsible,
12 but this was the first kind of real challenge he had
13 in terms of his responsibility to protect the
14 President's papers, and he was kind of articulating
15 how he was going to parse everything out and get
16 everything separated.

17 Q Was this a conversation that you recall,
18 even though I know you don't recall specifically
19 when, was it in person or on the telephone?

20 A I think it was on the telephone.

21 Q Was anyone else on the telephone, to the
22 best of your knowledge?

1 A To the best of my knowledge, there was no
2 one else on the telephone.

3 Q How close were you with Mr. Nussbaum
4 personally prior to Mr. Foster's death?

5 A I was a close professional colleague of his
6 who grew very close to him in the context of his
7 taking on the responsibilities of being the
8 President's counsel and continue to be very close to
9 him. I'm incredibly fond of him personally.

10 Q After Mr. Nussbaum became the White House
11 counsel in the winter of 1993, did he from time to
12 time discuss with you his job and how he might carry
13 out some responsibilities as White House counsel?

14 A Some, but not -- I mean, he would bounce
15 things off me on occasion.

16 Q You described how Mr. Nussbaum had stated
17 to you that he would treat the documents in
18 Mr. Foster's office.

19 A How he planned to.

20 Q It's your clear impression that it had not
21 occurred yet, that he was describing a future event?

22 A Yes.

1 Q Do you recall whether or not he stated that
2 anyone else would be present in Mr. Foster's office
3 during his review of the contents?

4 A Well, he said to me that there were some
5 law enforcement people, the Park people would be
6 there and some of the law enforcement people would be
7 there, that Lisa Foster's lawyer was going to be
8 there, that the Clintons' personal lawyer was going
9 to be there and I don't know who else he said.

10 Q By "the Clintons' personal lawyer," who did
11 you understand Mr. Nussbaum to be referring to?

12 A Lavid Kendall.

13 Q Did he state whether or not any
14 representatives of the Department of Justice were
15 going to be there?

16 A I don't really recollect him specifically
17 stating that.

18 Q You do recollect, however, the Park Police
19 being mentioned?

20 A Yes.

21 Q Did he mention the FBI specifically?

22 A He stated other law enforcement people,

1 other than the Park Police, but I couldn't list them
2 for you.

3 Q Did you express any view about how
4 Mr. Nussbaum or others should review the contents of
5 Mr. Foster's office, the documents and other things?

6 A Excuse me, could you just repeat the
7 question?

8 Q Sure. Referring now to the conversation
9 with Mr. Nussbaum that we've been describing, did you
10 express any view about how the contents of
11 Mr. Foster's office should be reviewed?

12 A I think that what I -- my recollection is
13 that I just said that it sounded like he had thought
14 it through pretty carefully and I wished him good
15 luck.

16 Q Why did you wish him good luck?

17 A This is a very stressful event, and it was
18 so close on the heels of it, and they had been
19 working so closely together, that I just felt it
20 would be very emotionally charged for him.

21 Q Did Mr. Nussbaum state in this telephone
22 conversation whether or not anyone had disagreed with

1 his approach to this?

2 A He gave no indication that anyone had
3 disagreed with his approach.

4 Q Did he indicate one way or another whether
5 anyone had disagreed with his approach? For example,
6 did he say this is the way everyone thinks we should
7 do it?

8 A He gave me no other comments from any other
9 person that I can recollect.

10 Q Do you recall anything else about this
11 conversation you've been describing with
12 Mr. Nussbaum?

13 A No.

14 Q Now, you've said that it's possible you
15 spoke with Mr. Nussbaum on a number of occasions on
16 the 21st or 22nd, but I can't recall whether it was
17 one or more than one; is that right?

18 A Yes. At some point -- I remember at some
19 point he and I had a discussion about going to
20 Arkansas for the funeral, but I don't know which day
21 or when.

22 Q But this topic we've just been describing,

80

1 the review of the contents of Mr. Foster's office, on
2 how many occasions did that topic come up?

3 A It came up the time before the review and
4 some days subsequent to the review he told me he felt
5 that it had been done in an orderly fashion.

6 Q Let me hold off on that conversation, and
7 as you point out, rightly focus on prior to the
8 review. Just that one time is all you discussed it
9 with Mr. Nussbaum?

10 A Yes.

11 Q Do you recall anything else about that
12 discussion with Mr. Nussbaum that we haven't talked
13 about?

14 A No.

15 Q Did you ever discuss that topic -- the
16 topic being the review of the contents of
17 Mr. Foster's office with anyone else in the White
18 House counsel's office prior to the review?

19 A Not that I recollect.

20 Q Did you discuss it -- and this question
21 being the review of the contents of Mr. Foster's
22 office -- with anyone else in the White House prior

1 to the review?

2 A Not that I recollect.

3 Q Did you discuss it with either the
4 President or Mrs. Clinton?

5 A I don't believe I discussed it -- I have no
6 recollection of discussing it with either the
7 President or Mrs. Clinton.

8 Q And I take it you didn't discuss it with
9 Ms. Williams?

10 A I have no recollection of discussing it
11 with Ms. Williams.

12 Q Did you ever express -- and the words,
13 don't let me imply artificial precision with the
14 words I choose in this question -- did you ever
15 discuss with Mr. Nussbaum the sentiment that it would
16 be wrong or unwise to allow the Park Police or other
17 investigators unlimited access to the contents of
18 Mr. Foster's office?

19 A I have no recollection of using that
20 language, and I have no recollection of having that
21 sentiment.

22 Q In your conversation with Mr. Nussbaum, did

1 you ever say to him in words or substance why are you
2 doing it this way, why don't you do it some other
3 way?

4 A No, I have no recollection of giving Bernie
5 Nussbaum directions as to how to do it.

6 Q He was asking your advice, though, wasn't
7 he?

8 A In a general way. It wasn't -- asking my
9 advice in the rhetorical way, not in asking for my
10 advice way. It's like this is what I'm going to do,
11 what do you think of it. It was not asking my advice
12 expecting some serious response.

13 Q Did Mr. Nussbaum ask you to convey anything
14 to the First Lady about the conversation that he had
15 had with you?

16 A About the documents?

17 Q About the review of the office or the
18 contents in Mr. Foster's office.

19 A Not that I recollect. I mean, he asked me
20 how Hillary was doing, but I don't remember him
21 specifically asking me to talk to her about his
22 office.

1 Q And whether or not he asked you to, did you
2 discuss with Mrs. Clinton the contents of
3 Mr. Foster's office or the review of those contents
4 by Mr. Nussbaum or others?

5 A I have no recollection of talking to
6 Mrs. Clinton about the contents of Vince Foster's
7 office.

8 Q What about the manner of the review of the
9 contents? Did you ever discuss that with her?

10 A At some point, at some time over the last X
11 number of months, I may have had sort of a general
12 conversation about it. In the context of Bernie
13 getting certain criticism for it, but in a time close
14 to the discussing of the office, I have no
15 recollection of having a conversation with her about
16 the actual sorting of documents and transferring
17 documents or anything.

18 Q And just so that the syntax, as
19 Mr. Ben-Veniste points out, in my questions isn't
20 confusing, let me try and be a little bit redundant
21 about that.

22 You've said that you don't have any

1 recollections of having any such conversations with
2 Mrs. Clinton. Let me just try and probe that a
3 little more. Is it you don't know one way or
4 another, or your best recollection is you did not
5 have such conversations.

6 MR. ROMANO: The "such" refers to now?

7 MR. JOHNSON: On the topic of Mr. --

8 THE WITNESS: I'm just trying to --

9 BY MR. JOHNSON:

10 Q The "such" being what we've been talking
11 about, Ms. Thomases, the content in Mr. Foster's
12 office or the review of the contents by Mr. Nussbaum
13 and others. You've testified that you don't recall,
14 you have no recollection of conversations with
15 Mrs. Clinton on that topic, other than it may have
16 occurred in the last few months?

17 A Or substantially subsequent to the actual
18 distribution of the documents.

19 Q And I'm just trying to be as clear as I can
20 be by, what you mean by you don't have any
21 recollection of that. Are you suggesting you don't
22 know one way or the other whether you had such a

1 conversation or you're suggesting that you think
2 those conversations did not occur?

3 A I don't think -- I don't recollect having
4 such conversations, and I just don't recollect having
5 those conversations.

6 Q Is it possible that you did?

7 A I mean, is it possible? Yes, it is
8 possible. I just simply -- the things, when I think
9 back to that period of time, the things that I talked
10 to her about, that was not about Vince Foster's
11 suicide and the subsequent events, that's not
12 anything that sort of comes out in my mind. That's
13 not to say it could not have. I just have no
14 recollection.

15 Q In your more recent conversations or at
16 least in the conversations that occurred
17 substantially after the events that we've been
18 describing, did Mrs. Clinton indicate to you that she
19 believed that you and she had discussed it
20 previously?

21 A It never came up in our subsequent
22 conversations.

1 Q The "it" being whether or not you had
2 this --

3 A Whether or not we had it. We have to have
4 a little monitor here.

5 Q We'll call it the indefinite antecedent
6 monitor.

7 A That's why we have litigators.

8 Q Apparently not. Let me -- Counsel, I'm
9 going to read a couple of statements from depositions
10 that we've taken in this case. My purpose being
11 simply to aid, if it's possible, in refreshing your
12 recollection.

13 (Pause.)

14 BY MR. JOHNSON:

15 Q I'm referring to page -- this is the
16 deposition of Stephen Neuwirth, and it's commingled
17 somewhat with other topics, but it starts on page
18 111, at least the part I propose to read, and
19 Mr. Neuwirth is testifying about a conversation that
20 Mr. Neuwirth had with Mr. Nussbaum.

21 And I'll read you a little bit of this,
22 Ms. Thomases, just to see whether or not it may

1 refresh any recollection that you have.

2 "Question: What did Mr. Nussbaum tell you
3 about the conversation that he had with Ms. Thomases?

4 "Answer: Again, while I don't remember his
5 exact words, in a very brief discussion, my
6 understanding was that Mr. Nussbaum felt that
7 Ms. Thomases and the First Lady may have been
8 concerned about anyone having unfettered access to
9 Mr. Foster's office.

10 "Question: Did Mr. Nussbaum indicate to
11 you that Ms. Thomases had spoken to the First Lady?

12 "Answer: No.

13 "Question: Did Mr. Nussbaum indicate to
14 you the basis for the statement that Ms. Thomases and
15 the First Lady had concerns about non-White House
16 officials having unfettered access to Mr. Foster's
17 office?

18 "Answer: Again, I don't think I said that
19 was a statement. That was my understanding of what
20 Mr. Nussbaum was communicating. He did not say what
21 the basis was."

22 Obviously, this is a conversation in which

1 no one said you participated. It's a conversation
2 between Mr. Neuwirth and Mr. Nussbaum.

3 But having heard at least Mr. Neuwirth's
4 recollections as I've read them to you, does that
5 refresh your recollection about anything you may have
6 said to Mr. Nussbaum in the conversation with him
7 that you do recall?

8 A It doesn't. It doesn't refresh my
9 recollection.

10 MR. JOHNSON: Why don't we take a
11 five-minute break, and I have another document I want
12 to retrieve.

13 (Recess.)

14 BY MR. JOHNSON:

15 Q Ms. Thomases, let me also read other
16 deposition testimony, which we have taken. This is
17 from the deposition of Bernard Nussbaum taken in
18 connection with this investigation. And again, my
19 purpose here is just to read to you his recollections
20 of conversations he may have had with you in an
21 attempt to see whether or not that in some way
22 refreshes or changes your recollection of those

1 conversations. Lance, I'm on page 138.

2 "Question: During that period of time, did
3 you have any telephone conversation with Susan
4 Thomases?

5 "Answer: I don't remember speaking with
6 Susan Thomases on the 21st. Maybe I did. I just
7 don't remember. I remember speaking with Susan
8 Thomases on the 22nd.

9 "Question: Was that conversation with her
10 on the 22nd in person or by telephone?

11 "Answer: By telephone.

12 "Question: When the conversation on the
13 22nd took place, did you know where Ms. Thomases was?

14 "Answer: No.

15 "Question: Did you know that she was in
16 Washington?

17 "Answer: I don't remember. I really
18 should say I don't remember. She may, in a
19 conversation, say I'm calling you from Washington. I
20 just don't remember.

21 "Question: Did she call you or did you
22 call her?

1 "Answer: My memory is she called me, but
2 that doesn't mean that I didn't get a message from
3 her and I called her back. My memory is she called
4 me.

5 "Question: What was the conversation on
6 the 22nd with Susan Thomases?

7 "Answer: The conversation on the 22nd that
8 she asked me what was going on with respect to --
9 what was going on with respect to the investigation
10 or the examination, the examination of Mr. Foster's
11 office. She had heard there were discussions in the
12 White House with respect to this issue which there
13 were on the 22nd, which you'll get to, I presume.
14 Was everything okay? What was going on and I said
15 I'm having discussions with people.

16 "See, I remember this conversation before
17 the search but it could have been after the search.
18 That's one of my problems, but I remember saying
19 Susan, I've been talking to people in the White
20 House, how the search would be conducted. I will
21 determine with them what the right procedure is and I
22 followed it, depending on if that conversation took

1 place before or after the search."

2 Just for completeness, I'll read it to
3 you. Continuing Mr. Nussbaum's answer "we're going
4 to follow the procedure that I think is right and
5 that's the way -- that's what I'm going to do, and
6 that's the kind of -- I think what I'm determining is
7 the proper way to act with respect to this matter.

8 "Question: How long was the conversation?

9 "Answer: A few minutes. Not very long.

10 "Question: Did she tell you how she had
11 heard there were discussions concerning the manner in
12 which the review would occur?

13 "Answer: The search would occur?

14 "Question: The search would occur.

15 "Answer: No, she didn't say how. She just
16 said she had heard.

17 "Question: And what else did she say in
18 the conversation?

19 "Answer: That's all I remember, that she
20 had heard there were discussions or that there
21 were -- she might have even said disagreements, that
22 she had heard that and what was going on.

1 "Question: Did you ask her where she heard
2 that?

3 "Answer: No, I didn't ask her where she
4 heard that.

5 "Question: Do you feel comfortable talking
6 about this issue with her?

7 "Answer: Yes.

8 "Question: Did you feel it was her
9 business?

10 "Answer: Yes, she's a friend. She's a
11 friend of mine. She's a friend of a lot of people in
12 the White House, including the President and First
13 Lady. She's an advisor. This was a decision that
14 had to be made as to how the search was going to be
15 conducted and I felt comfortable discussing it with
16 her.

17 "Question: Do you know whether anybody had
18 asked her to give advice regarding how the search
19 would be conducted?

20 "Answer: I don't know anybody who gave her
21 advice.

22 "Question: Did you hear whether anybody

1 had asked her to give that kind of advice?

2 "Answer: No.

3 "Question: Did she mention the First Lady
4 in the telephone call?

5 "Answer: I don't recall her mentioning the
6 First Lady in the telephone call.

7 "Question: Did she say that the First Lady
8 was concerned about giving the law enforcement people
9 unfettered access to the documents?

10 "Answer: No.

11 "Question: Did she say that anybody was
12 concerned about giving law enforcement people
13 unfettered access to the documents?

14 "Answer: She said people are concerned
15 about whether I was using the correct procedure or
16 whether the procedure was -- people were concerned or
17 disagreeing, something like that, whether a correct
18 procedure was being followed, whether I was using the
19 correct procedure, whether it was proper to give
20 people access to the office at all, something like
21 that.

22 "But I said Susan -- she wasn't in the

1 White House, at least I didn't know she was in the
2 White House -- I said I'm having discussions with
3 various people. As far as the White House is
4 concerned, I will make a decision as to how this is
5 going to be conducted. It's going to be done the
6 right way. I will balance out the various
7 interests. It's going to be done the way I think it
8 should be done."

9 I apologize for this.

10 "Question: Did she say people were
11 concerned about giving people unfettered access to
12 the law enforcement people to the documents?

13 "Mr. Pedowitz:" who's Mr. Nussbaum's
14 attorney, "those words, Mr. Chertoff, in substance
15 that they had that particular concern?

16 "The Witness: No, no, it was not a concern
17 about giving people access to documents. There was a
18 sense of -- this notion of people's privacy shouldn't
19 be invaded, that kind of sense, that people were
20 concerned that any procedure that's followed is done
21 with appropriate regard for people's privacy
22 interest. There was no fear of documents or people

1 looking at any particular document, but there was
2 that sense -- but in any event, I would deal with the
3 issue and I told her I would deal with the issue and
4 I would make a decision as to what to do."

5 I'll represent to you that this goes on for
6 some period of time and if it seems useful, I'll read
7 more, but does this refresh your recollection in any
8 way more than you've already testified about your
9 conversations with Mr. Nussbaum?

10 A No.

11 Q Do you recall ever having heard --

12 A Except I have to tell you, except I don't
13 remember -- my recollection is not that there was any
14 debate or concern or anything, but just that Bernie
15 was kind of venting how he was going to do it in a
16 way Bernie does.

17 Q If I'm understanding Mr. Nussbaum's
18 testimony correctly, it was at least his impression
19 that you had heard from someone other than himself
20 concerns about the search. Had you ever discussed
21 the search with anyone or the review of the contents
22 in Mr. Nussbaum's office with anyone prior to

96

1 discussing it with Mr. Nussbaum, and I said
2 Mr. Nussbaum's office and I meant Mr. Foster's
3 office.

4 A I have no recollection of discussing a
5 procedure for reviewing the documents in Vince
6 Foster's office. I don't remember discussing it with
7 anyone.

8 Q Let's not focus generally on the procedure
9 because that may be too limiting in my question. Had
10 you discussed in any way with anyone prior to
11 discussing it with Mr. Nussbaum any concerns at all
12 about the contents or documents in Mr. Foster's
13 office, including without limitation, any concerns
14 about privacy for the Foster family or anything like
15 that?

16 A I don't really have a sense of that. I
17 think there was a certain -- I don't remember having
18 that discussion. I really was not talking to a lot
19 of different people, so I don't know -- I don't know
20 whether -- I don't believe that these concerns were
21 really in my head. I mean, I think I was pleased to
22 hear that Bernie was being so sensitive to the

- 1 privacy of the Foster family, but I don't recall --
- 2 Q You don't recall expressing any concerns?
- 3 A I don't recall expressing any concerns.
- 4 Q And you don't recall anyone expressing any
- 5 concerns to you?
- 6 A No.
- 7 Q Let me show you, Ms. Thomases, two
- 8 documents bearing document production number 000647,
- 9 the second document bearing document number 000938.
- 10 The first document is what appears to be represented
- 11 to us, a pager record from Bernard Nussbaum's pager,
- 12 I believe, which indicates a telephone call from you
- 13 at 8:01 in the morning of July 22nd, 1993. I state
- 14 those things as not a fact, but that's what it
- 15 appears to be.
- 16 A Yes.
- 17 Q Do you recall whether or not you had
- 18 Mr. Nussbaum paged at approximately 8:00 in the
- 19 morning on the 22nd?
- 20 A I don't specifically remember it, but I
- 21 don't know that I did not.
- 22 Q It's possible you did?

- 1 A It's possible. I just can't seem to
- 2 remember.
- 3 Q Document number 938 appears to be a
- 4 telephone message to Maggie, which I assume is Maggie
- 5 Williams from July 22, 1993 at 9:00 a.m. It says
- 6 "Susan Thomases call" --
- 7 A Can I show this to my lawyer?
- 8 Q Please. "Call when you get in the
- 9 office." Have you ever seen that before?
- 10 A No, I've never seen this before.
- 11 Q Do you have any recollection today of
- 12 calling Maggie Williams early in the morning of the
- 13 22nd of July in 1993?
- 14 A I have no specific recollection of having
- 15 called her, but it's totally possible that I did call
- 16 her.
- 17 Q Now, let me try and just make the record as
- 18 clear as I can make it. You testified earlier, I
- 19 think, that you had no recollection of speaking with
- 20 Mrs. Clinton on the 21st; is that correct?
- 21 A No. I said I have no specific
- 22 recollection, but that I said that it is likely that

1 I would have called her or reached out to her and
2 therefore, I think I probably would have tried to
3 speak with her after I had been at the White House on
4 the 21st. I mean, I just don't have any specific
5 recollection of having reached her and having had
6 that conversation.

7 Q Is it your best guess that you at least
8 would have tried to contact her?

9 A Yes. It's my -- based on our relationship
10 and everything, but not any particular memory.

11 Q And I've read to you deposition transcripts
12 deposition testimony from Messrs. Neuwirth and
13 Nussbaum. My characterization is important. I'll
14 try and be general, Mr. Nussbaum indicating that you
15 expressed that people other than yourself were
16 concerned about privacy interests and other things,
17 and Mr. Neuwirth testifying that Mr. Nussbaum told
18 him that you had said that the First Lady was
19 concerned.

20 Is it possible, Ms. Thomases, that you
21 spoke with the First Lady on the evening of the 21st
22 and conveyed concerns raised by the First Lady in

100

1 your conversations with Mr. Nussbaum on the 22nd?

2 A I have no recollection of having done that
3 because I have no recollection of a conversation that
4 I had with her on the 21st, just my intuition that I
5 would have reached out to her.

6 Q And we've established, I think, fairly that
7 you don't have any recollection of it. But my
8 question is, is it possible that's what happened?

9 A I just -- I'm not -- speculation is not my
10 strength.

11 Q Maybe I can get to the same result by
12 stating the same question negatively. Are you
13 prepared to swear today that that didn't happen?

14 A I couldn't swear because I don't have a
15 recollection that -- I mean, I would not be willing
16 to swear for absolute -- for the reasons I've said to
17 you and there is a high possibility in my mind that I
18 reached out for her and a possibility that, in
19 reaching out for her, I reached her.

20 Q Just to be as clear as I can be, my
21 question really wasn't intended to be limited to
22 whether you actually spoke with her. But can you

1 swear you and Mrs. Clinton didn't discuss concerns
2 that you or she may have had related to the review of
3 Mr. Foster's office and that you didn't express those
4 concerns to Mr. Nussbaum? Can you be certain that
5 that didn't happen?

6 MR. ROMANO: Both those things?

7 MR. JOHNSON: Either of those things. I
8 was hoping to group them together.

9 THE WITNESS: Could you separate them
10 again?

11 MR. JOHNSON: Sure.

12 BY MR. JOHNSON:

13 Q Can you be certain under oath today that
14 you did not discuss with Mrs. Clinton on the 21st of
15 July '93 concerns that you or she may have had
16 relating to the examination of the contents of
17 Mr. Foster's office?

18 A I can't swear unequivocally because I don't
19 have any memory about any -- about the fact that I
20 did have a conversation or what the conversation was
21 about.

22 Q And just let me ask the same question

1 because your counsel has asked me to break it up and
2 I think it's right to do so. So I take it you also
3 can't swear that you didn't convey those concerns in
4 some way to Mr. Nussbaum on the morning of the 22nd
5 in your conversation with him which you've described?

6 A The same answer. I mean, I don't --

7 MR. BEN-VENISTE: We get into litigation
8 semantics, and I know you're not trying to do
9 something untoward or something that's not been done
10 with any other witness in this proceeding of which
11 there have been about 60, that when a witness doesn't
12 recall something, then to say do you swear that it
13 didn't happen or can you unequivocally rule out or is
14 it possible, all of these things that sort of don't
15 advance the peanut very far when you're taking
16 evidence. It just strikes me as unusual to begin
17 this kind of a procedure here with this witness.

18 MR. JOHNSON: Richard, I think there's
19 something in what you say and the reason I read to
20 you the deposition testimony of Mr. Neuwirth and
21 Mr. Nussbaum, which was under oath, was to suggest to
22 you that there's a basis in asking these questions,

1 and I just want to -- because I don't think there's
2 anything remote in here -- I want to ask you as
3 directly as I can whether you can say under oath that
4 Mr. Nussbaum's recollection about his conversation
5 with you is wrong.

6 MR. BEN-VENISTE: Mr. Nussbaum's
7 recollection -- hang on for a minute. Mr. Nussbaum's
8 recollection, as I recall it, was that he did not
9 believe that he mentioned anything about the First
10 Lady in his conversations with Mr. Neuwirth nor did
11 he believe that he had any conversation with
12 Ms. Thomases about any conversation with the First
13 Lady.

14 MR. JOHNSON: I think that's absolutely
15 right. I don't disagree with that. I didn't mean to
16 imply that Mr. Nussbaum had testified that -- my
17 point is -- I don't mean to bog us down in this.

18 BY MR. JOHNSON:

19 Q Mr. Nussbaum said in the conversation -- I
20 thought we did this a minute ago -- in his testimony
21 that you had expressed concerns based upon your
22 conversations with others relating to privacy or

1 perhaps other things about the way the examination of
2 the office might be conducted. And I guess my
3 question is, can you say with certainty that
4 Mr. Nussbaum is not correct?

5 MR. ROMANO: I think we've been around this
6 a couple times and you're now condensing what you
7 read from several pages, and he expressed it in a
8 variety of different ways. I don't know if he said
9 concern or not since I don't have the transcript, but
10 Ms. Thomases's testimony is that she does not recall
11 a conversation. And given that answer, you can draw
12 whatever conclusion you want about whether she could
13 unequivocally dispute the accuracy of Mr. Nussbaum's
14 testimony.

15 If that isn't good enough, can we just go
16 on to something else because I think the questioning
17 at this point is improper. You're asking her to
18 swear under oath that, that someone else's testimony,
19 we don't have the full transcript, we don't know the
20 full context and we're relying on your
21 characterization of the testimony and you're asking
22 the witness to swear under oath that it's wrong.

1 MR. JOHNSON: Actually, I'm asking the
2 opposite.

3 MR. ROMANO: You asked it both ways
4 actually.

5 BY MR. JOHNSON:

6 Q All I'm asking you is whether or not you
7 can say with certainty one way or the other that
8 Mr. Nussbaum is wrong in his recollection, as you've
9 heard them expressed to you. I'm not asking you to
10 swear that he's wrong. I'm asking you to swear
11 whether it's possible for you to know.

12 MR. BEN-VENISTE: In this regard, Kip, can
13 I make the observation and I know it wasn't
14 intentional on your part, but your characterization
15 of Bernie's testimony was that Ms. Thomases said that
16 she was concerned about the process when, in fact, at
17 page 142 of the transcript, the answer that Bernie
18 gave was she said people are concerned about it. So
19 the difference between whether Bernie remembered that
20 Ms. Thomases said she was concerned or whether she
21 said people are concerned or whether Mr. Neuwirth
22 said that Bernie told him that when Susan Thomases

106

1 explained her call to him, that he drew some
2 impression from it. We get really far down the
3 road.

4 It may well have been -- and I don't
5 criticize you for this -- it may have been the
6 fairest thing to do, to put on the record what these
7 two individuals' testimony was to see whether that
8 refreshes Ms. Thomases's recollection. Having done
9 so and having received the answer, it seems to me
10 that we've exhausted the issue.

11 MR. JOHNSON: I guess I tend to agree with
12 that.

13 BY MR. JOHNSON:

14 Q You were describing your conversation with
15 Mr. Nussbaum on the morning of the 22nd before we
16 started this and let me just say, I appreciate you
17 saying so but to the extent it hasn't been clear, I
18 haven't read deposition transcripts at this length in
19 any other deposition and my point was simply, in the
20 interest of fairness, not to attempt to characterize
21 it because lawyers never characterize it exactly
22 right or at least they never characterize it to the

1 satisfaction of others sitting around.

2 So my effort, Ms. Thomases, was to tell you
3 that we had been talking about conversations
4 involving you with others and to share with you their
5 recollections and their words of those conversations
6 with an effort to refresh your recollection. I do
7 agree --

8 A I appreciate that.

9 Q -- with counsel thus far. I think we've
10 gone about as far as we can in doing that.

11 What other conversations did you have on
12 the morning of the 22nd with anyone at the White
13 House before returning to New York?

14 A I don't know all the conversations. I
15 had -- I called people -- my tendency is I have no
16 specific recollection, but I believe that I probably
17 called the First Lady's office to find out kind of
18 how they were doing in a family way because I had to
19 get on and do my work and wasn't going to be able to
20 talk to them again that day and I was going to go
21 back to New York. So I have a recollection of having
22 checked in in the First Lady's office, but that's the

1 only other conversation that I remember having that
2 morning.

3 Q Now, you mentioned when you arrived at the
4 White House on the 21st that you tried to see four
5 people, the President, Ms. Williams, Mr. McLarty and
6 Mr. Nussbaum. And I think you said you did
7 eventually see the President late in the afternoon on
8 the 21st; is that correct?

9 A Uh-huh.

10 Q What do you recall about your conversations
11 with the President?

12 A It was a conversation based on friendship
13 in terms of our shared kind of feelings that we could
14 have done more if we had only known. It was that
15 kind of conversation.

16 Q To sort of use your words, which I think
17 are accurate from an earlier answer, were there any
18 conversations on more lawyerly topics?

19 A There were no conversations on any lawyerly
20 topics.

21 Q You didn't discuss, for example,
22 Mr. Foster's office or anything related to that?

1 A No. We discussed the President's
2 conversations with Vince Foster and then the
3 funeral -- the logistics of going to Little Rock for
4 the funeral. Those tasks always fall to a scheduler
5 so it's the conversations he's most comfortable
6 having with me.

7 Q Did you have any conversations with
8 Ms. Williams either on the 21st or 22nd before you
9 returned to New York?

10 A I think I talked to Maggie on -- I
11 recollect talking to Maggie on both dates, but I
12 don't know what conversations I had on which date.

13 Q Understanding that you won't be able to
14 separate the order of them, what do you recall about
15 your conversations with Ms. Williams?

16 A My conversation with Ms. Williams was her
17 first impression when she first learned that Vince
18 had taken his life and what she had done. Unlike
19 myself, Maggie Williams is a very religious person
20 and so it was very beautiful to hear her view of
21 things, so anyway, that's what we talked about.

22 Q Did Ms. Williams, at any time on the 21st

1 or 22nd, tell you she had been in Mr. Foster's office
2 on the evening of the 20th?

3 A Yes, she told me she had been in
4 Mr. Foster's office.

5 Q As specifically as you can, tell us what
6 you recall that Ms. Williams said.

7 A Ms. Williams told me that she had gone to
8 Vince Foster's office the night of the 20th. She
9 didn't say what time she went. But she said she had
10 gone to his office after she had learned that he had
11 taken his life. And she told me that she had gone
12 there and that she was surprised to find -- she
13 expressed it as a surprise to find Patsy Thomasson in
14 the office when she got there and she told me that
15 Patsy had -- I don't know whether she said it this
16 way, this is what makes it very hard because it's a
17 hard thing to do. She didn't tell me whether Patsy
18 had been there and said there was no note or she had
19 said that there was no note, but it was in that
20 context that she said to me that Vince had left no
21 note.

22 Q Let me just see if I understand the last

1 distinction that you made. You're not clear in your
2 own memory today whether Ms. Williams told you
3 independently that there was no note or whether she
4 was relaying to you something that Ms. Thomasson had
5 said?

6 A That's right.

7 Q But either way, it was clear that there had
8 not been a note found, that was your impression?

9 A That's right.

10 Q Did Ms. Williams say why she went to
11 Mr. Foster's office on that evening?

12 A She didn't say specifically why. I mean,
13 her office was down the hall from his office, and I
14 think that during the preceding months she had spent
15 many hours in Vince Foster's office talking to Vince,
16 and I think it was not clear whether she went there
17 for solace or to actually see something. I mean, it
18 was one of those -- it was not clear why exactly she
19 was drawn there.

20 Q Did she indicate to you whether or not she
21 conducted a review of the contents of Mr. Foster's
22 office, whether she searched his office on the

1 evening of the 20th?

2 A She didn't talk about that.

3 Q She didn't indicate one way or the other?

4 A She didn't indicate one way or the other.

5 Q Did you have an impression based on your
6 conversation with her one way or the other?

7 A No, my conversation with her really had to
8 do with emotional things and not really with
9 substantive things in terms of --

10 Q I take it, given your last answer, that you
11 did not discuss with Ms. Williams whether or not she
12 removed any documents from Mr. Foster's office?

13 A I did not discuss that with her. It didn't
14 occur to me at that time to have discussed that
15 issue.

16 Q As we sit here today, have you ever
17 discussed that topic with her?

18 A I can't say that I haven't discussed it
19 with her because in the context of everything that's
20 gone on subsequently, it's possible that I broached
21 it with her and asked her how she was doing and
22 everything, but I don't remember any specific

1 conversation directed at that. It's not the kind of
2 thing that I would have necessarily asked Maggie.

3 Q Why is that?

4 A If Maggie wants to tell me something, she
5 usually tells it.

6 Q Just to be precise, you don't ever remember
7 saying to Maggie, in words or substance, did you take
8 anything out of Vince's office that evening?

9 A No, I don't remember doing that in either
10 words or substance. I have no recollection of doing
11 that.

12 Q Have you ever spoken with Ms. Thomasson
13 about whether or not she was in Mr. Foster's office
14 on the evening of the 20th?

15 A I don't believe I've ever discussed it with
16 Ms. Thomasson. I'm not saying that I didn't ever
17 talk to her about it, but I have no recollection of
18 having talked to her about it.

19 Q And you've indicated that in your
20 conversations with Mr. Nussbaum on the 21st or 22nd,
21 that you had the impression that he had been in
22 Mr. Foster's office; is that right?

1 A I learned it from Newsweek. I mean --

2 Q You didn't learn it on the 21st or 22nd?

3 A I don't remember learning it on the -- I
4 don't remember learning it on the 21st or 22nd.

5 Q And I think your earlier testimony was
6 that --

7 A No, no, on the 22nd I had an impression
8 that he had been, yes. In the conversation I had
9 with him on 22nd, I clearly had the impression that
10 he had been in Vince Foster's office.

11 Q I think you told me about that
12 conversation, that it was just an impression, you
13 don't recall anything specifically that Mr. Nussbaum
14 may have said. Am I right about that?

15 A Well, I remember -- I do remember what he
16 said about how they planned to distribute the
17 documents and go through them and give them to the
18 appropriate parties and do what he felt was
19 appropriate to protect the presidential prerogatives,
20 et cetera.

21 Q And I misspoke in my question. What do you
22 base your impression on that he had been in

1 Mr. Foster's office?

2 A My impression, and I have to say it's very
3 hard because all of this is, as I say, mixed up with
4 subsequent reporting, but my impression is that he
5 told me that he had been there and as the decision
6 was made to kind of seal the office and so that --
7 which led me to believe he, in fact, had been there
8 prior to the sealing of the office.

9 Q What do you recall about your discussions
10 with Mr. Nussbaum on the topic of sealing the office?

11 A Nothing, just that they were doing it.

12 Q Did he express to you why they were doing
13 it?

14 A No. Subsequently, he went on to say
15 that -- at a later date, and I can't remember exactly
16 when, was that had he known that Vince's office was
17 considered a crime scene, he might have thought about
18 the whole thing.

19 Q Why don't you tell us, when did that
20 conversation occur?

21 A Oh, considerably after the whole incident
22 was over.

1 Q Several months afterwards?

2 A I can't remember specifically.

3 Q Even though you can't remember the time,
4 can you recall more specifically than you've already
5 said what Mr. Nussbaum said in that conversation?

6 A Just about what I've just told you.

7 Q That had he known it would be considered a
8 crime scene, he might have done what differently?

9 A He might have arranged for different things
10 in terms of -- done things differently at the
11 beginning.

12 Q Did Mr. Nussbaum ever describe to you --
13 strike that, Julie.

14 Have you ever had any conversations with
15 Mr. Nussbaum regarding the Department of Justice's
16 role in the review of the contents of Mr. Foster's
17 office?

18 A Not that I can recollect.

19 MR. BEN-VENISTE: Can we go off the record
20 for a second.

21 (Discussion off the record.)

22 BY MR. JOHNSON:

1 Q On the afternoon of the 22nd, Ms. Thomases,
2 you returned to New York; is that correct?

3 A Yes.

4 Q Have we covered -- I don't mean this to be
5 an estoppel-type question -- but as we sit here
6 today, have we covered the events in which you
7 participated in Washington on the 21st and 22nd
8 relating to Mr. Foster's death?

9 A I believe we have.

10 Q When is the next time you recall speaking
11 with the First Lady about Mr. Foster's death?

12 A The conversations that I remember were
13 clearly the conversations after the funeral.

14 Q What did you discuss with her at that
15 time? And in the interest of --

16 A Brevity.

17 Q -- brevity, obviously there was enormous
18 pain and lots of discussions about that, you can
19 exclude that from your conversation, and ordinary
20 grief.

21 A That's essentially what it was, ordinary
22 grief and how regretful I was that I couldn't

1 physically be there.

2 Q We have information on the afternoon of the
3 22nd, documents in Mr. Foster's office were placed in
4 the White House residence. When did you first learn
5 that, if, in fact, you know that as you sit here
6 today?

7 A I learned it from press reports.

8 Q Would this have been sometime after those
9 events; correct?

10 A Yes.

11 Q So you weren't consulted about that
12 contemporaneously?

13 A I was not consulted about that.

14 Q Have you had any discussion with
15 Ms. Williams relating to the document -- removing the
16 documents from Mr. Foster's office on the 22nd and
17 causing them to be transported to the White House
18 residence?

19 A I had no conversations with Maggie Williams
20 about those documents.

21 Q As you sit here today, you've never
22 discussed that with her?

1 A Not that I recollect.

2 Q Did you have any discussions with the
3 President or the First Lady on that topic?

4 A No, I haven't had any discussions with
5 them, to my memory, on that topic.

6 Q Excluding conversations you may have had
7 with your family members and things that may have
8 been precipitated by press events, have you had any
9 conversations with anyone in the Clinton
10 Administration on the topic of the transportation of
11 documents from Mr. Foster's office to the White House
12 residence on the 22nd of July?

13 A I don't think I've had any. I mean, as I
14 said, with respect to subsequent recent news events,
15 I might have, but I don't have at any time near the
16 actual events.

17 Q Let me ask you about the discovery of
18 Mr. Foster's handwritten note on the 26th of July.
19 When did you learn about that?

20 A Sometime around that time.

21 Q Do you know how you learned about it?

22 A The first person who told me about it was

120

1 Bernie Nussbaum.

2 Q At the time that Mr. Nussbaum told you
3 about that, do you know whether or not he had turned
4 over the note to law enforcement authorities?

5 A I don't know specifically whether he had
6 turned it over to law enforcement authorities yet.

7 Q What do you recollect about your
8 conversation with Mr. Nussbaum concerning the note?

9 A He told me that the note had been found.
10 He told me that there was no factual surprises in the
11 note. There's no information that gave any special
12 clue to Vince Foster's emotional state, and he said
13 that he wanted to show it to the President. I
14 thought it was before turning it over to the press,
15 to tell you the truth, not law enforcement people.

16 Q Was it your impression, in your
17 conversation with Mr. Nussbaum, that he had not yet
18 shown the note to the President?

19 A That was my distinct impression.

20 Q Did you have any understanding of why
21 Mr. Nussbaum was telling you about the contents of
22 the note even before he told the President?

1 A He may have been telling me afterwards, and
2 I just didn't quite get it, but I can't tell you why.

3 Q Did he state whether or not he had shown
4 the note to the First Lady?

5 A He did not specifically say.

6 Q Did you have an impression one way or
7 another based on what he said?

8 A No, I didn't.

9 Q Did you ever discuss Mr. Foster's note with
10 the First Lady?

11 A You know, I know this -- I've been
12 searching and searching my mind on this. At some
13 point in the context of all that has gone on, she and
14 I may have discussed the contents of the note. I'm
15 not saying that I haven't ever, but I don't really
16 remember it as something that was happening in the
17 time approximate to the finding of the note.

18 Q You think it maybe occurred at some time
19 but you don't recall it being near the time of the
20 discovery?

21 A Yes.

22 Q Did Mr. Nussbaum indicate to you whether or

1 not there was anything embarrassing to the First
2 Family or the White House in Mr. Foster's handwritten
3 note?

4 A In fact, he didn't tell me exactly what was
5 in the note when he told me about the note, but he
6 told me that it's all the kind of things that --
7 there was no surprises.

8 Q And I just wanted to be a little more
9 specific in the question. Did you and he discuss
10 whether or not there was anything embarrassing to the
11 First Family or to the administration in Mr. Foster's
12 note?

13 A We didn't specifically discuss that, but
14 his saying that there's no surprises implied to me --

15 Q It's implicit?

16 A Yes.

17 Q Even though you didn't discuss it, at least
18 you implied that to be the case?

19 A Yes.

20 MR. JOHNSON: Richard, I realize you need
21 to go and I think I'm generally complete on this
22 topic, although as we've discussed, I'll have some

1 more general questions of a wrap-up nature.

2 MR. BEN-VENISTE: Are they the usual Kip
3 Johnson wrap-up ones?

4 MR. JOHNSON: The usual, which if
5 Ms. Thomases knew --

6 MR. BEN-VENISTE: Call upon the witness to
7 do all the work.

8 EXAMINATION

9 MR. BEN-VENISTE:

10 Q Ms. Thomases, my name is Richard
11 Ben-Veniste, and I'm special counsel to the Minority
12 of this committee. Let me just ask you a few
13 questions regarding areas that Mr. Johnson covered,
14 the first of which is your recollection of
15 Mr. Nussbaum's statement about had he known that
16 Mr. Foster's office would be considered a crime
17 scene, he might have acted differently.

18 Was that statement made in a joking or
19 other manner?

20 A It was far -- it was a statement that was
21 made after he already left the White House.

22 Q I know that you are not a trial lawyer or

1 much less a criminal lawyer, but did you have any
2 reason to believe that Mr. Foster's office was
3 considered by anybody as a crime scene?

4 A No.

5 Q So did you take his remark to mean that
6 people were treating the issue as though Mr. Foster's
7 office were a crime scene, but that was not really
8 the case?

9 A Exactly. He was --

10 Q These things are not reflected on the
11 record and sometimes warrant some clarifying.

12 A Thank you for clarifying.

13 Q With respect to conversations with
14 Mr. Nussbaum on the 22nd of July prior to the time
15 that you left to return to New York City, I'd like to
16 focus on the process in the White House during those
17 first six months or so of the administration in terms
18 of whether issues were discussed by individuals in
19 the west wing who did not necessarily have the
20 responsibility for making decisions on those issues.

21 Can you give us some idea of the process
22 that went on in the west wing when an issue was

1 thrown on the table for discussion? And I'm going to
2 ask you, then, about specifically with respect to an
3 issue like the appearance of the Park Police at the
4 White House.

5 A While I was at the White House, almost at
6 some time every Wednesday I was not there enough to
7 know what you are describing.

8 Q The notion that people might be considered
9 or people might be discussing a particular issue,
10 would that strike you as being inconsistent with your
11 understanding of the way the Clinton Administration
12 was operating at that point, that there were people
13 who might be involved in discussing issues where
14 they, in fact, were not the decisionmakers?

15 A My opinion is that's how the press has
16 characterized it, but I don't know whether that, in
17 fact, is the way --

18 Q Did Mr. Nussbaum tell you in your
19 conversation with him on the 22nd what it was the
20 police were actually searching for?

21 A He did not.

22 Q In view of your assessment of

1 Mr. Nussbaum's emotional reaction to Mr. Foster's
2 death in those days immediately following the
3 suicide, could you describe what your mental
4 impression was of his state of mind at that point?

5 A I'm not into -- it's just not my style to
6 speculate on Bernie Nussbaum's state of mind.

7 Q Did you get any impression? I'm not asking
8 you to speculate.

9 A I mean, he was sad. He was sad. He had
10 not been Vince Foster's friend when he first came to
11 work at the White House counsel's office, and he felt
12 that they had become quite close, and so he felt a
13 certain guilt that having worked so closely with him,
14 that he had not noticed his state of mind, but that
15 may be me just projecting on him.

16 Q Was there a point where you looked back
17 over your contact with Vincent Foster over the days
18 and weeks immediately preceding his death and
19 reviewed whether there were any statements that he
20 made to you about matters that he was working on that
21 you felt he took more seriously than they warranted?

22 A I think he was -- the whole Washington

1 experience, physically moving here and everything was
2 not what he had hoped it would be.

3 Q Let me ask you specifically about the
4 travel office investigation. Did Mr. Foster indicate
5 to you in substance that he was troubled by the way
6 that investigation had singled out people that he
7 knew personally?

8 A Yes, he had expressed to me on occasion
9 that he was troubled by the travel office, not so
10 much that it had singled out people who were close to
11 him, but just that the whole thing was not -- had not
12 been a happy experience.

13 Q Did it seem to you that -- let me ask this
14 question in a very neutral way. Did you form an
15 impression about whether he was ascribing to the
16 matters surrounding the travel office matter an
17 importance beyond what you might have regarded as
18 reasonable? Was he taking it too hard?

19 A He saw it in the context of work, that it
20 was going to mean a lot more work and that he didn't
21 have the manpower and the resources to necessarily
22 handle the amount of work that went with it. That is

1 the context in which he spoke about it, you know,
2 that if, in fact, there were a Congressional
3 investigation, that it would mean more work.

4 Q Did Mr. Foster ever express to you any
5 concern, personal concern about any aspect of what he
6 was working on with respect to Whitewater in the
7 weeks or months prior to his death?

8 A You mean Whitewater, the transaction?

9 Q Right, other than what you've testified to
10 here today.

11 A No.

12 Q What I'm trying to get to is whether
13 Mr. Foster said, in words or substance, this is
14 horrible, this is terrible, I can't bear this, this
15 is going to be so awful, did he say anything that
16 would give you the impression that the Whitewater
17 investment as it related to the tax returns or to the
18 disclosure materials he might have been working on,
19 was of grave concern?

20 A He expressed no grave concern about it. It
21 was not an issue that he identified as having --
22 causing him concern, grave concern or anxiety or

1 whatever.

2 Q When you described what Mr. Nussbaum said
3 he intended to do vis-a-vis protecting the various
4 interests involved in the documents in Mr. Foster's
5 office, and how he might disburse those materials
6 ultimately, you indicated that he had intended or he
7 said he was intending to send the materials to
8 Mr. Kendall.

9 Now, I wonder whether you are telescoping
10 information that you have later learned into that
11 conversation on the 22nd because I'll tell you
12 frankly that I've heard no one mention that
13 Mr. Kendall was involved in representing the Clintons
14 up to that point and the information that we have
15 heard involved another partner at Williams &
16 Connolly?

17 A Well, I may have telescoped it. I'm not --
18 I may, but it was Williams & Connolly. He may not
19 have been the particular lawyer at Williams &
20 Connolly, but I know he intended to transfer the
21 documents to Williams & Connolly. So if I made a
22 mistake, I correct it.

130

1 Q Do you have any knowledge from any source
2 whatsoever that any note or other writing explaining
3 his reasons for suicide was not turned over to law
4 enforcement authorities?

5 A I have no knowledge of any note, any
6 writing that existed, that does exist currently that
7 has not been handed over to law enforcement
8 authorities.

9 Q Do you have any knowledge from any source
10 that materials from Mr. Foster's office were
11 surreptitiously removed from that office?

12 A No, I have no such knowledge.

13 MR. BEN-VENISTE: I have nothing further at
14 this time. Can we go off the record for a second.

15 (Discussion off the record.)

16 EXAMINATION

17 BY MR. JOHNSON:

18 Q Let me follow up, real quickly,
19 Ms. Thomases, on something Mr. Ben-Veniste raised.
20 In your conversation with Mr. Nussbaum, whether or
21 not it was Mr. Kendall, you did discuss that some
22 documents would be sent to Williams & Connolly; is

1 that correct?

2 A That's what I believe I heard.

3 Q And this was before the review of the
4 documents that took place in Mr. Foster's office; is
5 that correct?

6 A Again, I may have telescoped my subsequent
7 conversation with Bernard after the documents were
8 looked at into that conversation before the documents
9 were looked at.

10 Q Focusing on the one that took place before,
11 did Mr. Nussbaum indicate to you that there were
12 going to be documents sent to the Clintons'
13 attorneys?

14 A Yes.

15 Q Do you have any indication of how
16 Mr. Nussbaum knew there would be documents in
17 Mr. Foster's office that should be sent to the
18 Clintons' personal attorneys?

19 A I think that Mr. Nussbaum must have known,
20 as I did, that Mr. Foster had been working on the
21 Clintons' tax returns, which were documents that were
22 the Clintons' documents.

1 Q Did you specifically discuss the tax
2 returns or not in your conversation with
3 Mr. Nussbaum?

4 A No, we didn't specifically discuss the tax
5 returns.

6 Q With reference to the documents that would
7 be sent to the Clintons' attorneys, did you
8 specifically discuss any documents at all?

9 A We did not -- I did not specifically -- I
10 actually asked nothing. I was essentially listening
11 to what Bernie was telling me.

12 Q And your recollection is he described those
13 as personal documents?

14 A Personal documents of the President and
15 Mrs. Clinton.

16 Q And your impression was, based on prior
17 knowledge, that that referred to at least the Clinton
18 family tax returns; is that correct?

19 A Yes.

20 Q Did you have any other impression about
21 what kinds of personal documents, meaning personal to
22 the Clintons, might be contained in Mr. Foster's

1 office?

2 A The blind trust, which I had previously had
3 conversations with Mr. Foster about.

4 Q Any other things that come to mind?

5 A Nothing else comes to mind.

6 Q Did Whitewater come to mind when
7 Mr. Nussbaum indicated that he was sending documents
8 to Williams & Connolly or that he intended to send
9 documents to Williams & Connolly?

10 A It didn't come to mind, but it's not --

11 MR. ROMANO: Is the question whether they
12 came to her mind then?

13 MR. JOHNSON: Yes.

14 MR. ROMANO: During the conversation?

15 MR. JOHNSON: Yes.

16 THE WITNESS: This did not come to my mind
17 during the conversation.

18 BY MR. JOHNSON:

19 Q Did there come a time later in time when
20 you learned that documents relating to Whitewater
21 Development Corporation had been sent to Williams &
22 Connolly?

1 A Repeat the question. I'm sorry. I had a
2 listening lapse.

3 Q That's okay. I think you just said that at
4 the time of your conversation with Mr. Nussbaum, it
5 didn't specifically come into your mind that
6 Whitewater-related documents might be sent to
7 Williams & Connolly. And now I mean to say, did
8 there come a time later in time after that
9 conversation with Mr. Nussbaum when you did learn
10 that Whitewater-related documents had been sent to
11 Williams & Connolly?

12 A Yes, I did.

13 Q How did you learn that?

14 A I have no idea whether I learned it from
15 the press or whether I learned it from any particular
16 person.

17 Q Is there anything that might help you
18 refresh your recollection about that, or is it just
19 very blurred?

20 A I'm not saying that nothing could help
21 refresh that recollection, but it's not clear in my
22 mind when and how I learned it.

1 Q Did you and Mr. Nussbaum discuss why
2 Mr. Nussbaum intended to send documents outside the
3 Whitewater to Williams & Connolly in this initial
4 conversation in which he indicated to you he intended
5 to send documents --

6 A Did we discuss it?

7 Q Yes.

8 A We did not discuss it. I mean, we did not
9 have a conversation about that.

10 Q Did you and Mr. Nussbaum discuss any time
11 frame within which he intended to send documents or
12 cause to be sent documents to Williams & Connolly?

13 MR. ROMANO: Still on the 22nd?

14 MR. JOHNSON: In the one conversation we've
15 been referring to.

16 THE WITNESS: No.

17 BY MR. JOHNSON:

18 Q You've indicated, I think, at various
19 points in your testimony, Ms. Thomases, certain
20 knowledge about documents in Mr. Foster's office and
21 at the end of this I'm going to ask whether we've got
22 it all. But you indicated that he would have

1 documents relating to the tax returns being prepared
2 for the Whitewater Development Corporation?

3 A No, that's not the tax returns I was
4 talking about. The tax returns are the Clintons',
5 not about the Whitewater.

6 Q You're quite right. I misspoke. Any other
7 documents relating to Whitewater that you were aware
8 were in Mr. Foster's office as of July 20, 1993?

9 A None that I specifically knew about. I'm
10 not saying that there wasn't, but no --

11 Q My question might have been bad. I'm not
12 asking you to swear what was in there. I'm asking
13 you to swear to what was in your mind at that time.
14 Other than the Clintons' personal tax returns, you
15 don't have any knowledge of there being any other
16 Whitewater documents?

17 A And the documents related thereto.

18 Q In the days -- I'm sorry, do you want to
19 add something?

20 A Can I talk to Benny for just a minute,
21 please?

22 Q Sure.

1 (Witness conferred with counsel.)

2 (The reporter read the record as requested.)

3 THE WITNESS: And I want to say that I
4 don't have any specific knowledge, but based on my --
5 I know that Vince Foster had been working on the
6 winding up of the partnership relationship and it
7 is -- I would expect that those documents were, if
8 not in his office, notes about them were in his
9 office.

10 BY MR. JOHNSON:

11 Q Did you discuss that with anyone in the
12 days -- that belief with anyone in the days
13 surrounding Mr. Foster's death?

14 A I doubt it. I don't know for a fact that I
15 didn't, but it was not -- it was not an issue that
16 was front and center in my mind.

17 Q Did you ever, Ms. Thomases, have any
18 conversations with anyone in the days surrounding
19 Mr. Foster's death about whether or not any
20 information in Mr. Foster's office would prove to be
21 politically embarrassing to the administration if it
22 became public?

1 A You're asking if I had any discussions with
2 anybody? I don't know that I -- I cannot
3 specifically recollect having conversations with
4 anyone about what the something in Vince Foster's
5 office might be that would politically embarrass
6 them. People have so much different perspective on
7 what that consists of, so if you want to be specific.

8 Q I'm intending to be general instead, not
9 for any reason other than I just want to catch
10 anything that might be in your mind. Did you ever
11 have any conversations with anyone about -- a concern
12 about anything in Mr. Foster's office becoming
13 public, putting aside politically embarrassing or
14 otherwise? Were there any discussions about people
15 being generally concerned about the contents of his
16 office becoming public?

17 A First of all, I don't really -- I don't
18 think that I've ever had in my memory, I don't think
19 I've had conversations about any item in Vincent
20 Foster's office that might have been politically
21 embarrassing. I have no recollection of in that
22 context but then again, it may be my view of what's

1 politically embarrassing.

2 Q Could be, which was why I was trying to --

3 A I think that's --

4 Q I'm not trying to be cagey here. I'm
5 wondering whether you discussed with anyone a concern
6 that something in Mr. Foster's office might become
7 public as a result of his suicide?

8 A And there was such a limited number of
9 things that I knew about that were in Vince Foster's
10 office, that I can't generalize to larger issues of
11 what might have been politically embarrassing. He
12 obviously had lots of work that I knew nothing about,
13 or I assume he had lots of work that I knew nothing
14 about.

15 Q Maybe it's just out of fatigue that I keep
16 hearing something slightly different in the answer
17 than what I'm intending to ask. Did you have any
18 conversations with anyone in which concern was
19 expressed about the contents of Mr. Foster's office
20 at or around the time of his death, excluding the
21 conversation you've described with Mr. Nussbaum?

22 A No, I've had no conversations that I can

1 remember with anyone about the contents of Vince
2 Foster's office around the time of his death.

3 Q Did you yourself have any private concerns
4 about the contents of the office becoming public,
5 whether or not you discussed them with anyone?

6 A No, I don't recollect, and I don't believe
7 I had any private concerns about what would be
8 embarrassing in Vince Foster's office.

9 Q As we sit here today, Ms. Thomases --
10 strike that, Julie. I'm sorry.

11 Up to, and include now at this moment in
12 time, have you had any conversations with the
13 President or the First Lady about the contents of
14 Mr. Foster's office or the review of the contents of
15 Mr. Foster's office that we have not previously
16 discussed in this deposition?

17 A I don't recollect having a conversation
18 with the President about the contents of Vince
19 Foster's office at any time subsequent to that and
20 with respect to my conversations with the First Lady
21 on the subject. It was far after the event and was
22 in most generalized terms about how the process, as

1 part of a whole process of what was going on, went.

2 Q Did Mrs. Clinton ever indicate to you that
3 she had directed Ms. Williams to place certain
4 documents in the White House residence?

5 A Mrs. Clinton never indicated to me that she
6 had given such instructions.

7 Q Did Ms. Williams ever indicate to you that
8 Mrs. Clinton had given her such instructions?

9 A No, Ms. Williams never indicated to me that
10 she had received such instructions from
11 Mrs. Clinton.

12 Q Now, the First Lady gave a press briefing
13 on April 22, 1994 in which she covered lots of
14 topics.

15 A When was this?

16 Q April 22 of 1994. And in that press
17 conference, the topic of Mr. Foster's death and the
18 events surrounding his death came up. Have you ever
19 had any conversations with the First Lady regarding
20 statements she made in that press briefing?

21 MR. COLE: Statements in general or
22 statements relating to Mr. Foster?

1 MR. JOHNSON: Thank you. Statements
2 related to the Foster investigation.

3 THE WITNESS: I have no recollection of
4 having a conversation with her specifically about
5 comments that she made about Vince Foster in that
6 press briefing, but I'll go look them up now.

7 MR. JOHNSON: Ms. Thomases, thank you for
8 your patience. Let me just generally -- this is not,
9 as counsel will agree with me, we're not conducting a
10 trial here and this is not a civil litigation. Our
11 goal is to acquire any information that a witness
12 believes is relevant and competent on the topic so I
13 always conclude -- Mr. Ben-Veniste makes fun of this
14 question -- I conclude in the following way.

15 BY MR. JOHNSON:

16 Q Our topic is the investigation into
17 Mr. Foster's death and the handling of the documents
18 of that death and as you sit here today, do you have
19 any information to provide the committee on those
20 topics that you and I have not discussed in the
21 course of the deposition?

22 A Counsel, do I have any? Not that I can

1 think of.

2 Q To the best of your recollection, as you
3 sit here today, we've covered the things that you
4 know on this topic; is that correct?

5 A Uh-huh, to the best that I can anticipate.

6 MR. JOHNSON: Thank you very much for your
7 patience. Lance, do you have anything further?

8 MR. COLE: Nothing further. Thanks, Kip.

9 MR. JOHNSON: Notwithstanding everything
10 you read in the press, we are very concerned about
11 the confidentiality of this proceeding, so we'd be
12 grateful if you wouldn't discuss the deposition here
13 today with anyone.

14 THE WITNESS: That would be fine. I have
15 no desire to discuss it with anyone, except my
16 attorneys.

17 MR. JOHNSON: Sure.

18 (Whereupon, at 4:40 p.m., the deposition
19 was concluded.)

20

21

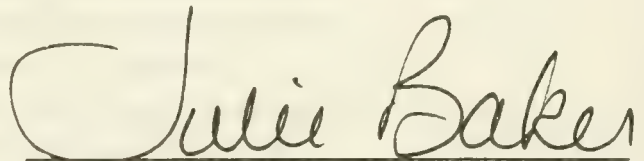
22

SUSAN P. THOMASES

CERTIFICATE OF NOTARY PUBLIC & REPORTER

144

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in cursive script that reads "Julie Baker". The signature is written in dark ink and is positioned above a horizontal line.

Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

**DEPOSITION OF PHILIP B. HEYMANN
IN RE: S. RES. 120**

FRIDAY, JULY 21, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of PHILIP B. HEYMANN, called for examination pursuant to notice of deposition, at 10:58 a.m. in Room 640-A of the Hart Senate Office Building, before GARY S. HOWARD, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, Esq.
Majority Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
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On behalf of the Committee.

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On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Philip B. Heymann | |
| by Mr. Chertoff | 4 |
| by Mr. Ben-Veniste | 146 |
| by Mr. Chertoff | 197 |
| by Mr. Ben-Veniste | 207 |
| by Mr. Chertoff | 214 |

EXHIBITS

| Philip B. Heymann DEPOSITION NUMBER | IDENTIFIED |
|--|------------|
| Deposition Exhibit PH-1 | 58, 4609 |

1 PROCEEDINGS

2 Whereupon,

3 PHILIP B. HEYMANN

4 was called as a witness and, having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. CHERTOFF:

8 Q Mr. Heymann, before we proceed, I just want
9 to give you some preliminary observations concerning
10 the nature of the proceeding that we have here.11 This is a deposition conducted pursuant to
12 Senate Resolution 120, which establishes a Special
13 Committee to conduct an investigation involving
14 Whitewater Development Corporation and certain
15 related matters.16 Section 1(b)(1) of that resolution
17 authorizes investigation and public hearings into
18 whether improper conduct occurred regarding the way
19 in which White House officials handled documents in
20 the Office of Deputy White House Counsel Vincent
21 Foster following his death.

22 And that's going to be the focus of today's

1 deposition.

2 I understand that you were abroad at the
3 time that you first learned about this request to
4 testify.

5 Is that correct?

6 A Yes.

7 Q And did you learn about that from your
8 attorney?

9 A Yes. I knew that -- I anticipated that you
10 would ask me to testify, but nobody had contacted me
11 in any way.

12 Q In connection with this particular
13 appearance, have you been asked to produce any
14 records to the Senate?

15 A A year and a half ago, I was asked to
16 produce a number of records and I sent -- I simply
17 referred them to the Department of Justice, where
18 they all were, giving a list of 15 or 20 records that
19 were there.

20 Q Were there any records that you did not
21 produce at that time that are pertinent to the
22 subject of this deposition?

1 A I think only the notes. I haven't matched
2 what I have with that list. But I think only the
3 notes that I can see that you have in front of you,
4 Mr. Chertoff.

5 Q And so we're clear for the record, I have
6 notes that were -- they're headed, July, Tuesday, 20,
7 and they run through what looks like 10:37, 11:00, I
8 guess it's about six pages later.

9 What I should probably do, identify them in
10 the record as F-160 through 165, and ask you if you
11 wouldn't mind comparing those with the notes that
12 you're referring to right now and tell me whether
13 there's any pages missing.

14 And you might want to keep your set of
15 notes out because we'll be referring to them.

16 A Okay. I would like to be clear that I
17 haven't -- just yesterday, I looked at what collected
18 papers I have, and I have letters to people who had
19 written in saying Foster's suicide could best be
20 investigated by them from Minneapolis, things like
21 that.

22 So I undoubtedly have papers you are

1 welcome to.

2 That's a nonpage (indicating).

3 Q Well, it's actually the bottom of a
4 previous page.

5 A These (indicating) are the same notes that
6 I was referring to. And I now have a copy of them in
7 front of me.

8 MR. LUSKIN: Should we mark them, Mike?

9 MR. CHERTOFF: No. I've marked my set. I
10 don't think we need to mark the originals, as long as
11 we've verified that F-160 through 165 matches your
12 originals.

13 BY MR. CHERTOFF:

14 Q To the extent that you've mentioned maybe
15 having other documents, we're not interested,
16 obviously, in observations from people on the
17 sidelines about what ought to be done.

18 But to the extent that you have any
19 documents that in any way relate to or refer to any
20 interaction with the White House regarding the
21 handling of documents in Mr. Foster's office that
22 involve either your communications with other

1 officials or your personal observations, matters
2 communicated to you by other government officials, or
3 your own thoughts concerning your interactions with
4 government officials, that we would be interested in.

5 A The only thing that I know that fits into
6 those categories, and I'll go back and take a look,
7 are a couple of memos written by Roger Adams.

8 I'd be surprised if you don't already have
9 them.

10 Q We do have two memos from Roger Adams.

11 A Those are the only two that I have in mind.

12 MR. LUSKIN: We'll undertake to review his
13 documents against the list of things apparently
14 provided to you by the Department of Justice.

15 MR. CHERTOFF: Okay.

16 MR. LUSKIN: And if there are additional
17 documents, we'll undertake to provide them to you.

18 MR. CHERTOFF: Great.

19 BY MR. CHERTOFF:

20 Q Now, you understand this is a deposition in
21 advance of public testimony that you are likely to be
22 asked to give sometime within the next couple of

1 weeks.

2 This deposition is obviously going to
3 proceed by way of my asking you questions and then
4 Mr. Ben-Veniste, and you're giving answers under
5 oath.

6 If you don't understand a question or it's
7 confusing in some way, please let me know and I'll
8 rephrase the question.

9 Likewise, please don't speculate or guess
10 unless I ask you to speculate or guess.

11 If you need a break for some reason, let me
12 know and we'll go off the record and pause.

13 The stenographer's notes and transcript of
14 the conversation is going to be held Committee
15 Confidential until you have an opportunity to look at
16 it and review it. I normally would say that it would
17 be until the beginning of the hearings, but the
18 hearings have begun already.

19 We will try to make it available to you as
20 soon as possible, as soon as it's prepared, probably
21 early in the week next week, so that you can review
22 it and make any clerical and administerial changes.

10

1 Obviously, if you were to make a change in
2 the deposition that was substantive, that could in
3 itself become an issue for further examination.

4 And then, within four days of your
5 testimony, we will give you a copy of the deposition,
6 provided that you agree to keep that to yourself and
7 Counsel and not to disseminate it to anybody else.

8 MR. LUSKIN: Can we agree that for purposes
9 of this review, since he's up in Boston, that you can
10 share a copy with me if we agree not to make copies
11 at this point.

12 MR. CHERTOFF: Absolutely. That's right.
13 You can each have a copy, as long as you keep it
14 within Mr. Luskin's firm, and you, Mr. Heymann, you
15 keep it amongst yourselves.

16 MR. BEN-VENISTE: Off the record.
17 (Discussion off the record.)

18 MR. CHERTOFF: Now, if Counsel would just
19 identify his name for the record, please.

20 MR. LUSKIN: I'm Robert Luskin, from Comey
21 Boyd & Luskin, Washington, D.C.

22 BY MR. CHERTOFF:

1 Q Now, there may be objections during the
2 course of the deposition. Let's get them on the
3 record and then you can proceed to answer.

4 If there is an objection that is
5 accompanied by an instruction to you not to answer,
6 please wait until we've hashed it out. We'll either
7 decide to agree that you should answer or we'll
8 decide to put it to one side or, if necessary, we'll
9 get a ruling by the Committee Chairman, who can
10 decide ultimately about whether you should answer or
11 not.

12 Is there anything about what I've indicated
13 to you that is unclear that you'd like me to
14 elaborate on?

15 A No.

16 Q Now, Mr. Heymann, when did you become
17 Deputy Attorney General of the United States?

18 A I believe it was May, 1993.

19 Q And when did you first learn that you were
20 going to be selected for that position?

21 A In late March or early April of '93.

22 Q Can you briefly tell us how it is that you

1 came to be selected for the position?

2 A I was in Israel at the time. I knew that my
3 name was around in the list of people being
4 considered for that position, and others.

5 I thought that Chuck Ruff, my very close
6 friend, was going to be Deputy Attorney General. He
7 called up, called me up in Israel and said that he
8 was not going to be chosen because of a nanny problem
9 and that he had told me that he recommended me and
10 asked if I would come in and see the Attorney
11 General.

12 It was, fortunately, at the very end of a
13 trip. I said, I'd be happy to do it within a few
14 days.

15 Q And was it as a consequence of that that
16 you ultimately got selected?

17 A I came in and I met, in order, Vince
18 Foster, Bernie Nussbaum, Webb Hubbell, and Janet
19 Reno. And I thought that -- that was on a Monday or
20 Tuesday, and I thought that I was selected at that
21 point.

22 Two days later, I got a call.

1 Q Can you, going backwards in time, just
2 briefly give us a summary of your career since your
3 graduation from law school?

4 A I was in the Air Force before going into
5 law school.

6 I went to Harvard Law School. Graduated in
7 1960. Clerked for Justice Harlan from '60 to '61.
8 Worked in the Solicitor General's office in the
9 Department of Justice from '61 to '65.

10 Then went over to the State Department
11 where I was first a deputy and then the acting
12 administrator of the Bureau of Security and Consular
13 Affairs.

14 Then I became deputy assistant secretary of
15 state in charge of international organizations. Then
16 I became executive assistant to what is now the
17 deputy secretary of state.

18 I then became a public defender when the
19 administrations changed, on my way, going back to
20 Harvard Law School, to teach at Harvard Law School.

21 I came down with Archibald Cox and Jim
22 Borenberg to set up the Watergate office. Came back a

1 couple of summers to take part in the first trial
2 there and then argue the first appeal.

3 In 1978, I was asked to be assistant
4 attorney general in charge of the criminal division.
5 I was that until 1981, leaving Harvard on leave of
6 absence during that time. Then resigning and getting
7 reappointed.

8 I did a lot of work in foreign countries on
9 their criminal justice systems in the years between
10 '81 and '93. And in '93, I became Deputy Attorney
11 General.

12 Q Were you at all involved in the
13 presidential campaign in 1992?

14 A I wrote a letter or two, but beyond that,
15 not at all.

16 It might be helpful if I say that I have
17 never met the President of the United States, other
18 than in a receiving line. Nor the First Lady. I met
19 the First Lady once when she came to a luncheon at
20 the Justice Department.

21 The President of the United States could
22 not identify me.

1 MR. CHERTOFF: Off the record.

2 (Discussion off the record.)

3 BY MR. CHERTOFF:

4 Q All right. Let me direct your attention,
5 Mr. Heymann, to July of 1993. And I'd like to ask
6 you, during that month, if you could tell us what the
7 personnel structure of your personal office was at
8 the Department of Justice.

9 A It's a little harder than it sounds. I was
10 having a hard time getting the people I wanted in
11 place.

12 I think at that time I only had the people
13 I had borrowed from the criminal division when I
14 first arrived. Well, plus Cindy Monaco.

15 So the senior person would have been David
16 Margolis from the criminal division, then moved up to
17 the deputy's office, Roger Adams, Rod Rosenstein, who
18 worked on Waco, Cindy Monaco.

19 And I just can't date the arrival of three
20 other special assistants. I suspect they all arrived
21 after that date.

22 Q When did Irv Nathan arrive?

16

1 A I think Irv arrived in late August or
2 September. I could be wrong on those dates, but I
3 think it's late August or September.

4 Q Mr. Margolis -- when did you first come to
5 know Mr. Margolis?

6 A I met Mr. Margolis when I became head of
7 the criminal division, when he was then a deputy in
8 the organized crime section and I made him the chief
9 of organized crime when his predecessor left.

10 Q And have you been in contact with him over
11 the years since that time?

12 A Yes.

13 Q Are you generally familiar with his
14 background and career?

15 A Yes.

16 Q I understand you can't give us
17 chronological precision. But can you give us a
18 general sense of what his professional background is?

19 A He graduated from Harvard Law School. He
20 worked early, I think, as assistant U.S. attorney and
21 then as a strike force chief in Connecticut.

22 I don't know whether I'm missing some time

1 in here or not, Mr. Chertoff, but he then comes down
2 to work in the organized crime section. He became
3 deputy chief of the organized crime section. He
4 became chief in 1979, something like that.

5 He stayed in that position until during
6 either the Reagan or Bush administration. He was
7 moved up on an acting basis to being a deputy in the
8 criminal division.

9 Q And was he occupying that position when you
10 brought him into the deputy's office?

11 A That's what he was doing, yes.

12 Q Is it fair to describe Mr. Margolis as a
13 career prosecutor?

14 A He sort of epitomizes the most highly
15 respected career prosecutor at this time.

16 There's no more highly respected career
17 prosecutor at this time.

18 Q And he is someone who has a substantial
19 amount of experience in conducting investigations?

20 A Yes.

21 Q Is it fair to say that from your knowledge
22 over the years, he has worked on among the most

1 sensitive investigations ever conducted by the
2 Department of Justice?

3 A He's worked on a lot of sensitive
4 investigations. I don't know whether they're the most
5 sensitive, but he's worked on a lot of sensitive
6 investigations.

7 Q Does he have a security clearance?

8 A Yes.

9 Q Without breaching security by telling us
10 what it is, is it a high security clearance?

11 A I imagine so. I haven't actually checked
12 what security clearance recently.

13 Q I'd like to direct your attention now to
14 July 20th of 1993.

15 When did you first learn about -- and the
16 period thereafter. When did you first learn about
17 Vincent Foster's death?

18 A I believe that I first learned about it by
19 reading it in the newspaper or hearing somebody tell
20 me they'd seen it in the newspaper or heard it on
21 television on the morning of the 21st.

22 I do not think I knew it on the 20th.

1 Q And what did you do as a consequence, if
2 anything, of hearing that news?

3 A I can't remember exactly what prompted
4 events that took place on Wednesday the 21st, when I
5 became making arrangements with the White House as to
6 how documents will be handled.

7 I can't remember whether any of the three
8 following happened, though I suspect it is the first.

9
10 I suspect that the White House had made
11 contact with the Attorney General and she told me to
12 pick up the ball and handle, and make necessary
13 arrangements and handle relations and then Bernie
14 Nussbaum and I would have been on the phone.

15 I don't specifically remember that.

16 The other two alternatives are I, for some
17 reason, was prompted to pick up the phone and call
18 White House counsel or he picked up the phone and
19 said he'd like help.

20 But I honestly don't remember which of the
21 three that was.

22 Q At some point in time that day, though, you

20

1 initiated the process of involving the Department of
2 Justice in the matter of the documents by having a
3 conversation with Bernie Nussbaum?

4 A Yes.

5 Q Do you remember approximately when that
6 was?

7 A I'm quite -- I believe it was in the
8 morning, indecently early.

9 I looked at my calendar yesterday for that
10 day and I went off to an all-day conference. So I
11 think I must have had a conversation first thing in
12 the morning. And I think in the morning, I began the
13 process of setting it up in the Department of Justice
14 by talking to Roger Adams and asking him if he would
15 go over and help with the process of sorting out what
16 documents would be made available and which wouldn't.

17 Roger raised a question, saying that he had
18 worked during the transition in the White House
19 counsel's office and he wondered if that created an
20 appearance of bias.

21 If you know Roger Adams well, it's hard to
22 imagine what it would take to create an appearance of

1 bias by Roger because he's unbiassable.

2 And I know that I sent him up to talk to
3 the Attorney General about what her thoughts were on
4 that subject. She apparently did not think that
5 there was a problem and by mid-afternoon, I had him
6 scheduled to go over and I had sometime in the
7 afternoon asked David Margolis to go, too, because of
8 the experience to which you referred.

9 Q Now let me take you back in time to the
10 conversation with Mr. Nussbaum.

11 However it was triggered, what do you
12 remember of the conversation that you had with Mr.
13 Nussbaum?

14 A I remember -- let me begin, Mr. Chertoff,
15 by stating what the problem is with documents.

16 If I may, I'd like to even take a step back
17 more broadly than that.

18 Q Sure.

19 A The suicide of a White House aide did not
20 seem to me, on its surface, if you ignore what I'm
21 about to say, to be a major event for the Department
22 of Justice or for federal law enforcement.

1 There are 30,000 suicides in the United
2 States each year. I had seen Vince Foster two weeks
3 before. He had been at a party and he had spent the
4 entire evening staring blankly ahead.

5 I remembered that immediately.

6 In this situation, I've been through more
7 of them than anyone in the country. I've been through
8 Jimmie Carter's peanut warehouse. I've been through
9 Watergate. I've been through Billy Carter's deal with
10 Khadaffi. I've been through Bert Lance. I've been
11 through Hamilton Jordan.

12 I could go on and on.

13 MR. BEN-VENISTE: You've been through
14 ABSCAM, too.

15 THE WITNESS: I've been through ABSCAM,
16 too. Would you please delete the term, ABSCAM.

17 (Laughter.)

18 That's a joke.

19 (Laughter.)

20 There are three things that get the
21 Department of Justice into a suicide which, if it had
22 taken place 100 yards one direction or another, would

1 not have even -- there would not have even been
2 federal jurisdiction over.

3 It would have been District of Columbia or
4 Virginia or whatever borders the national park.

5 Number one is I know there's going to be a
6 serious problem with documents because there are
7 serious issues of executive privilege and there are
8 serious issues of law enforcement and they aren't
9 easily reconciled.

10 Number two, I know that there are going to
11 be political attacks and political allegations of
12 cover-up and I know that there's going to be
13 conspiracy theorists. I've been through that
14 regularly and I know that they're out there.

15 And that the two are difficult, number one
16 and number two, difficult to put together because
17 number two leads me to want to keep things at a
18 routine level, and that means handled by the Park
19 Police or handled, if it were in the District of
20 Columbia, by the District of Columbia.

21 And yet, number one requires some very
22 sophisticated help, dealing with documents.

1 That difficulty of reconciling the three,
2 number one and number two, leads to the third, and
3 that is I worry a lot about the Department of Justice
4 retaining the appearance and the reality of
5 absolutely unbiased law enforcement.

6 And those are the problems that I
7 immediately start to address.

8 On the problem of reconciling executive
9 privilege and law enforcement, you plainly cannot say
10 to the White House general counsel's office, because
11 your deputy has committed suicide, or appears to have
12 committed suicide, we have full access to all your
13 files.

14 So we can't make the judgment completely
15 ourselves as to what's relevant.

16 On the other hand, I don't think it's wise
17 or desirable for the White House counsel to decide on
18 his own what is executive privilege and what isn't.

19 I agreed with Mr. Nussbaum on what I think,
20 and continue to think, is an entirely sensible plan
21 for reconciling these competing interests.

22 I would send over to career prosecutors of

1 unimpeachable reputation and rectitude and they
2 would, with him, look at every document in the
3 office. They would look at the heading of it and
4 maybe the first couple of lines, in order to see
5 whether it had any likely relevance or any possible
6 relevance, to Vince Foster's death.

7 In other words, if the heading said,
8 Supreme Court Nominees, it would be set aside as of
9 no relevance. If it said, Recent Psychiatric
10 Investigations, it would obviously be relevant. If it
11 said, if it was a pink slip saying, you're being
12 fired, Mr. Foster, that would obviously be relevant.

13 The relevant documents might or might not
14 have executive -- the White House might or might not
15 want to assert executive privilege for relevant, law
16 enforcement relevant documents. If they did not, they
17 would simply give them to us. If they did, we would
18 set them aside in a pile to be held and we would
19 resolve the questions of executive privilege by
20 taking them into the legal counsel's office or
21 somewhere else.

22 I continue to believe that that was a very

1 sound and sensible system for handling the documents.
2 And that was agreed to between Mr. Nussbaum and I on
3 Wednesday, the 21st.

4 Now, I just want to say one more word in a
5 long answer.

6 Agreed doesn't mean a promise. I never
7 understood this to be a promise, a commitment. I
8 understood it to be that we both thought that this
9 was the right way to handle what would otherwise be a
10 very difficult and sensitive problem.

11 BY MR. CHERTOFF:

12 Q Now, was this conversation a conversation
13 that you referred to that occurred in the morning of
14 the 21st?

15 A I can't remember whether it took place in
16 the morning or the afternoon, Mr. Chertoff.

17 I suspect it took place in the morning, but
18 I cannot remember.

19 Q Did you have more than one conversation
20 with Mr. Nussbaum on that day?

21 A I don't remember, and my phone logs don't
22 show any conversations with Mr. Nussbaum because they

1 would have been made directly. I would have just
2 dialed him from my office.

3 Q Let me go back and ask --

4 A Or he would have called me directly from
5 the office.

6 Q Let me go back and talk about various parts
7 of your previous answer.

8 Have you had occasion in your earlier
9 experiences to -- not necessarily to deal with the
10 suicide of a White House official -- but to deal with
11 situations where there had to be a kind of review of
12 documents at the White House that you've described,
13 which is to say, joint review by department lawyers
14 and by someone from the White House counsel's office?

15 MR. LUSKIN: You mean within his personal
16 experience?

17 BY MR. CHERTOFF:

18 Q Yes, in your personal experience, when
19 you're working in government.

20 A I watched quite closely the Whitewater --
21 I'm sorry -- the Watergate handling of documents. I'm
22 sure that problems like that must have come up in the

1 set of cases that I referred to during the Carter
2 administration, but nothing springs to mind right
3 away.

4 Q In terms of going in and reviewing the
5 documents, it was your understanding and your belief
6 that all the documents would have to be reviewed at
7 least to some level of depth.

8 A That's correct. But not to a great level of
9 depth for many of them because, for many, it would be
10 apparent on its face that it didn't bear on the
11 purpose of our investigation, which was to determine
12 whether Vince Foster committed suicide, as he planned
13 to -- as he appeared to.

14 Q And in making that determination, you would
15 be wanting to look for motivation.

16 Correct?

17 A Yes.

18 Q Would you also be interested in determining
19 whether the suicide suggested a potential compromise
20 of some national security because of the possibility
21 of blackmail and things of that sort?

22 A I'm a little bit -- I did not -- I don't

1 think an investigation of what had the appearance of
2 a suicide would have justified looking through the
3 general counsel's office for every possible
4 embarrassment that may be somewhere in the general
5 counsel's office.

6 In other words, I would have thought that
7 the documents we were interested in would be
8 something that were, rather plausibly, related to
9 suicide, would rather plausibly be a motivation for
10 suicide.

11 I don't have to tell you that lawyers
12 generally work with people's troubles and people's
13 problems and people's embarrassments and it doesn't
14 lead lawyers -- and the existence of other people's
15 problems, troubles, and embarrassments don't
16 generally lead lawyers to commit suicide.

17 Q I had actually asked a somewhat different
18 question.

19 If there was some evidence that the lawyer
20 himself were being blackmailed or extorted --

21 A Yes.

22 Q -- that would clearly --

30

1 A That would be --

2 MR. LUSKIN: I'd just ask for you to wait
3 for him to finish.

4 THE WITNESS: Yes.

5 BY MR. CHERTOFF:

6 Q That would clearly be, for example,
7 something that you would want to look at.

8 Right?

9 A Yes.

10 Q If the lawyer, in addition to having a
11 professional relationship with a client, had a long-
12 standing and close personal relationship with a
13 client, then it's conceivable that a situation that
14 threatened embarrassment to the client could in fact
15 be a factor in troubling the lawyer.

16 Correct?

17 MR. BEN-VENISTE: I really object to that
18 kind of speculation.

19 MR. CHERTOFF: The question --

20 MR. BEN-VENISTE: We're dealing with some
21 pretty serious issues at a level now where Mr.
22 Heymann has given a view about the scope.

1 And now to suggest that because of the
2 relationship between an attorney and a client that
3 goes over a period of time, that that somehow changes
4 what is an appropriate standard of review or thinking
5 about a lawyer's files, where a client may have
6 various problems that need resolving --

7 THE WITNESS: I don't feel comfortable
8 answering.

9 MR. CHERTOFF: Well, let me put my
10 statement on the record, please.

11 The Witness has offered a view about
12 lawyers' offices. I think I'm entitled to, having had
13 the Witness express an opinion, I'm entitled to probe
14 the opinion, rather than just accept it at face
15 value.

16 I think I'm also entitled to call the
17 Witness's attention to particular characteristics
18 that I think one could infer existed in this case, in
19 terms of dealing with that answer.

20 I think, Mr. Ben-Veniste, if you want to
21 have rule that we're not going to ask a question of
22 the Witness in terms of his general opinion about

32

1 anything, that may or may not be a wise rule, but we
2 certainly have not observed that up to this point in
3 time.

4 MR. BEN-VENISTE: Well, it's different
5 than, a general opinion is different than
6 speculating, which is what I think you've asked him
7 to do.

8 MR. CHERTOFF: I think I'm entitled to ask
9 any witness who offers an opinion whether the opinion
10 would change based upon hypothetical states of fact.
11 I certainly know that's true in court.

12 So there is an objection. I'm going to ask
13 that the Witness have the question be read back to
14 him. If someone wants to instruct the Witness not to
15 answer, we can go from there.

16 MR. LUSKIN: Can I ask for a clarification,
17 which is that this is a hypothetical question rather
18 than a question which is directed towards whether or
19 not this was something that was then in his mind, or
20 whether he had a conversation with anyone prior to
21 this.

22 MR. CHERTOFF: That's right.

1 MR. LUSKIN: Or whether in fact it was a
2 consideration in discussing what course to take.

3 MR. CHERTOFF: That's right.

4 MR. LUSKIN: I think it's important to
5 distinguish the hypothetical from real time.

6 MR. CHERTOFF: This is a hypothetical
7 question based on the Witness's prior answer.

8 (The Court Reporter read the record as
9 requested.)

10 THE WITNESS: Understanding, Mr. Chertoff,
11 that my answer is speculative, I don't honestly
12 believe that that is a likely cause of suicide.

13 I have a relative who is very dear to me
14 who got in serious trouble with the law and I felt
15 very sad about it, but I wasn't deeply depressed
16 about it.

17 I could be dead wrong, but I don't think
18 it's a likely motivation for suicide.

19 BY MR. CHERTOFF:

20 Q You mean likely in and of itself or do you
21 mean likely as part of a number of problems?

22 A I suppose as part of a number of problems

1 that might weigh on someone.

2 Q And again, in the realm of -- since you had
3 expressed an opinion earlier concerning the kinds of
4 things that might motivate lawyers to commit suicide,
5 I'd like to just pursue the hypothetical further.

6 Supposing the lawyer himself was concerned
7 about whether his actions in terms of assisting the
8 client to file papers, might have raised certain
9 legal problems.

10 Could that be a potential factor?

11 A I do feel stunningly ill-equipped to answer
12 the question.

13 I read the note. I haven't reread recently
14 the note that Vince Foster left, apparently written a
15 few days before his suicide.

16 He obviously was feeling depressed about
17 his own inadequacies in handling, and that obviously
18 was one of the factors that was worrying him.

19 Q Is it fair to say, then, that in going into
20 an investigation into what might motivate someone to
21 commit suicide, you'd have to be willing to evaluate
22 the evidence presented as it was presented, rather

1 than having a hard and fast rule that certain things
2 are to be looked at and certain things are not to be
3 looked at?

4 Correct?

5 MR. LUSKIN: And again, this is, let me
6 clarify, a hypothetical question.

7 MR. CHERTOFF: Yes.

8 MR. BEN-VENISTE: My objection to the use
9 of hypotheticals at this point is that the use of
10 these transcripts is virtually uncertain, I think at
11 best. And the use to which this type of response
12 would be put, it seems to me, is something we don't
13 know and that we ought to be very careful about it,
14 given the types of things that we have seen referred
15 to previously in the course of this investigation and
16 especially in view of the very unfortunate leaking
17 and misrepresentation of documents that were in the
18 possession of the Department of Justice and have come
19 into the possession of our committee, under
20 assurances of confidentiality.

21 Since, indeed, Mr. Heymann was in fact
22 confronting a very real situation and we have the

1 ability to ask him about his thought processes in
2 connection with addressing that problem, I really
3 don't see why it is necessary to get into this
4 speculative realm of hypothetical situations.

5 MR. CHERTOFF: The Witness had some
6 questions ago volunteered a long and interesting,
7 but, again, speculative and general, set of opinions
8 concerning suicide and the type of things that you
9 would look for in a suicide.

10 I think, having volunteered that answer, I
11 would like to probe that answer and I think maybe the
12 way to avoid this in the future is to have the
13 Witness restrict his answers a little more narrowly
14 to the question.

15 The answer being out on the table, though,
16 I'm confident that at the hearing, these kinds of
17 issues are going to be raised. And I think it would
18 be wise for everybody to know what the answers are
19 likely to be.

20 And maybe with that, it may actually
21 eliminate some potentially wide-ranging and perhaps
22 not particularly relevant questions at the hearing.

1 In any case --

2 MR. BEN-VENISTE: My experience is that it
3 creates just the opposite inducement.

4 MR. CHERTOFF: I'm not going to spend a lot
5 of time on this, but I would like to try to move
6 through this probing of the earlier answer, if I can.

7 And unfortunately, I'm going to have to ask
8 to have the question read back again.

9 (The Court Reporter read the record as
10 requested.)

11 THE WITNESS: Yes.

12 BY MR. CHERTOFF:

13 Q Now in this particular case, you assigned
14 Mr. Margolis and Mr. Adams to go in and supervise
15 this process of reviewing the documents.

16 Correct?

17 A Yes.

18 Q And in your conversation with Mr.
19 Nussbaum --

20 A Supervise from?

21 Q From the department's point of view.

22 A From the department side.

1 Q And your understanding was that they would
2 do in tandem with Mr. Nussbaum.

3 Correct?

4 A Yes.

5 Q And your understanding was that with
6 respect to certain documents, it might require only a
7 very cursory look at the document to realize that the
8 document was not going to be relevant.

9 Correct?

10 A Yes.

11 Q And your understanding was that with
12 respect to other documents, it might require a little
13 bit more review in order to ascertain whether the
14 document was relevant.

15 Correct?

16 A I don't think I had much of an
17 understanding one way or the other on that, but, yes,
18 that would be quite possible.

19 Q And you were entrusting to Mr. Margolis and
20 to Mr. Adams the responsibility of making that
21 judgment based on their experience and their
22 integrity.

1 A Yes, with the assistance of the FBI agents
2 and the Park Police agents, who I knew would be
3 there, too.

4 MR. LUSKIN: Just one thing. I understand
5 that objections to form are to be reserved here and
6 aren't a basis for asking the Witness to decline to
7 answer. But I'm concerned in terms of getting a full
8 account of Mr. Heymann's thought process or what did
9 or didn't happen.

10 We run a risk with a succession of leading
11 questions that you get the answer to your questions,
12 but you don't get the benefit of his recollection.

13 MR. BEN-VENISTE: I really was going to put
14 out that, with some witnesses, it's quite effective
15 to use leading questions as a technique in order to
16 move the deposition along and to focus the witness on
17 a particular area.

18 But when we have a witness as experienced
19 as Mr. Heymann, I don't think it's necessary and I
20 think it would be quite useful to have Mr. Heymann
21 tell in his own words from a narrative standpoint
22 what occurred. And then if you have follow-ups, you

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1 might draw his attention to those.

2 So I think Mr. Luskin's point is very well
3 taken.

4 MR. CHERTOFF: Well, I'm certainly going to
5 give Mr. Heymann an ample opportunity to give a
6 narrative statement.

7 MR. BEN-VENISTE: I think you ought to do
8 it sooner rather than later, as a matter of fairness
9 and the way this record is assembled.

10 MR. CHERTOFF: I think, Mr. Ben-Veniste,
11 I'm still working off a rather long narrative
12 question with which we had begun. So I'm going to try
13 to finish working through that and then we'll get on
14 with the narrative.

15 BY MR. CHERTOFF:

16 Q Now, again, regarding your conversation
17 with Mr. Nussbaum, you indicated that as of the 21st,
18 you had, and he agreed with you, about the manner in
19 which the review would take place.

20 Correct?

21 A We agreed, yes.

22 Q Can you tell us as best as possible what

1 you recall concerning the conversation about this
2 process?

3 A I'm afraid that I literally don't remember.
4 I just don't remember the conversation. I know we
5 agreed and I know that because I know I sent Adams
6 and Margolis over and I even thought the process was
7 going to start that afternoon.

8 But I don't remember the conversation, Mr.
9 Chertoff.

10 Q Can I infer from your answer that as of the
11 time you sent Mr. Margolis and Mr. Adams over that
12 afternoon, you believed you and Mr. Nussbaum were in
13 agreement?

14 A Yes.

15 Q Were there any instructions you gave Mr.
16 Adams and Mr. Margolis before sending them over?

17 A I know I was getting worried by the delays
18 by that time because we were going on 24 hours after
19 the suicide, and I was anxious for it to move ahead.

20 The only other thing I remember, Mr.
21 Chertoff, is that I wanted the FBI to be there as
22 well as the Park Police.

1 I asked Mr. Margolis to contact the FBI. I
2 wanted it to be the Washington field office because I
3 think if you move things to headquarters or to the
4 top of the Justice Department, it looks like, it fees
5 speculation as to special handling.

6 And I know that Mr. Margolis reported back
7 to me that he had talked to, I guess it's Capt.
8 Charles Hume. And Capt. Hume had told him that he had
9 already asked the FBI to accompany him.

10 Q Why were you concerned about the delay?

11 A I was simply concerned that we ought to be
12 getting on with it quickly. I knew this would command
13 immense amounts of public attention.

14 Q At that point in time, when you had sent
15 Mr. Margolis and Mr. Adams on to the White House,
16 what was your understanding concerning the manner in
17 which Mr. Foster's office was being safeguarded, if
18 any?

19 A I don't remember what, if any,
20 conversations I'd had about that. But it, of course,
21 makes no sense to have an agreement as to how
22 documents will be reviewed unless the understanding

1 was that the office was being safeguarded in such a
2 way that the documents that you were going to review
3 were all there when you arrived for the review.

4 Is that answer clear?

5 Q Yes. What, if anything, did Mr. Nussbaum
6 tell you during any conversation you had with him on
7 the 21st, when you were working out the procedure for
8 reviewing the documents regarding whether he or
9 anybody else had been in the Foster office after Mr.
10 Foster's death, searching for something?

11 A I don't remember any -- I have no memory on
12 that subject at all.

13 Q Does that mean you don't remember one way
14 or the other?

15 A I don't remember one way or the other.

16 Q Now, did you give Mr. Margolis and Mr.
17 Adams any direction before they left that afternoon
18 about what they should be looking for?

19 A Beyond the fact that they should be looking
20 for what is relevant to the suicide, and setting that
21 aside, I do not think I gave them further direction.

22 Q Now, at this point in time, what was your

1 awareness -- I'm sorry?

2 A I'm sorry, Mr. Chertoff. The picture that
3 I'm giving has Adams and Margolis in little more of a
4 central role than I imagined it at that time.

5 The investigation was being carried out
6 because it took place on National Park land by the
7 Park Police. I thought the Park Police were not
8 accustomed to dealing with White House people and
9 therefore, I thought that the FBI should be in there.

10 The lawyers were not there to do the
11 investigation. The lawyers were there to manage and
12 mediate the process of deciding what documents would
13 be produced because I thought the investigators
14 needed that.

15 Why I bring that all up is they very much
16 did not feel like they were in charge of the
17 investigation. I was very clear with them that I did
18 not want them in charge of the investigation.

19 I had very much in mind I wanted the
20 investigation handled by the people who are
21 responsible for deaths in the Park Police, but I
22 wanted to bring in the FBI, although it wasn't on

1 park territory, although they weren't responsible
2 because I thought the Park Police needed help and the
3 Park Police were happy.

4 And I would have made all that clear to
5 Margolis and Adams, neither of whom would have felt
6 competent to conduct the investigation, anyway.

7 That also means that when any document was
8 looked at, the investigators might very well have
9 been the ones who said, oh, yes, that might very well
10 be pertinent. If they did, then Margolis and Adams
11 would either support them or not support them.

12 Q So was it your understanding with Mr.
13 Nussbaum that the investigators themselves would have
14 an opportunity to look at least at part of the
15 document?

16 A I can't remember well enough to know
17 whether that was explicit or not, Mr. Chertoff.

18 Q Was it your understanding yourself that, in
19 some way, whether it be looking at the document or
20 hearing a description from Mr. Margolis and Mr.
21 Adams, that the investigators would have an
22 opportunity to weigh in on the issue of relevance?

1 A Yes.

2 Q Did you have discussions with anybody else
3 at the White House on the 21st, besides Mr. Nussbaum,
4 concerning this procedure?

5 A I don't think so, no. Not to the best of my
6 memory.

7 Q Now, did you consider on the 21st as well
8 the question of inventorying the documents or keeping
9 a record of either the entirety of the documents that
10 were in the office or of some subset of the
11 documents?

12 A I think that I left that entirely to the
13 investigators with the aid of attorneys to help them
14 with executive privilege.

15 I think I would have not known was is
16 generally done there and wanted them to do whatever
17 was generally done, again, with the help of dealing
18 with claims of executive privilege.

19 Q Now, again, focusing on your discussion
20 with Mr. Nussbaum on the 21st, and what you two
21 agreed would be the procedure.

22 With respect to those categories of

1 documents that were regarded by the investigators as
2 relevant, but that were subject to claims of
3 privilege that you have testified were to be set
4 aside.

5 What was your understanding with Mr.
6 Nussbaum about how you would resolve privilege issues
7 with respect to those documents?

8 A I don't recall a specific understanding on
9 it. I have some vague memory of talking about perhaps
10 the legal counsel's office might have a role in that.
11 But I don't have a very clear memory of much of the
12 discussion of that.

13 Q And what is the legal counsel's office?

14 A The office in the Department of Justice
15 that is responsible for rendering opinions on legal
16 issues. And I think it has the most expertise in the
17 Department of Justice on claims of executive
18 privilege.

19 Q In your experience, does the office of
20 legal counsel from time to time called upon to look
21 at particular records that are possibly subject to
22 claims of executive privilege in order to evaluate

1 those claims?

2 A Yes, I think so.

3 Q Now, did you have any conversations with
4 anybody from the FBI to yourself on the 21st,
5 concerning the manner in which this review of
6 documents in Mr. Foster's office was to be carried
7 out?

8 A No. At least I don't remember any.

9 Q After Mr. Margolis and Mr. Adams left to go
10 to the White House, did you have any further contact
11 with them that day?

12 A I think I was still there when they
13 returned from the White House, saying that there was
14 an agreement that they would begin the following day,
15 that it was too late in the day.

16 Q Did they explain to you what had been the
17 delay in beginning on the 21st?

18 A By the time the Park Police, the FBI and
19 they were there, it was close to 5:00 p.m. I know
20 from newspaper stories that a variety of things were
21 going on and meetings were taking place in the White
22 House.

1 But that is all third-hand, from my point
2 of view.

3 Q They didn't tell you what the delay was?

4 A Only that it was too late to get started.

5 Q What did they tell you about the agreement
6 they had with Mr. Nussbaum?

7 A They told me, when they returned -- I
8 forgot. So it's obvious that I did talk to them that
9 night. I'm now checking my notes.

10 They told me that Mr. Newirth had disagreed
11 on that occasion with the notion that the review
12 would be done as I have described it, that David
13 Margolis had said, it's a done deal. We have agreed
14 on that. Bernie and Phil have already agreed on that,
15 that Mr. Nussbaum agreed and said, yes, that's
16 correct, we have agreed on it, and overruled Mr.
17 Newirth.

18 If I could, I think it's worthwhile, Mr.
19 Chertoff, saying just a word about the notes that I'm
20 referring to there.

21 Q I'm going to ask you about how these are
22 prepared later because I know we're going to come to

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1 that.

2 MR. BEN-VENISTE: If it has some relevance
3 to the previous answer that you've given, I think you
4 should explain it.

5 THE WITNESS: I just wanted to make clear
6 that these were put together as I was leaving the
7 Justice Department because there had been newspaper
8 stories and I anticipated that there would be
9 hearings on the Vince Foster matter, that they
10 weren't made contemporaneously.

11 BY MR. CHERTOFF:

12 Q Is it an accurate record of your memory of
13 the events?

14 A Yes.

15 Q Do you have an independent recollection of
16 this conversation that you had with Mr. Margolis and
17 Mr. Adams the night of the 21st of July, 1993?

18 A Yes, though the notes certainly add a great
19 deal of detail that I otherwise would not be able to
20 remember of what had happened two years ago now on a
21 single day.

22 Q Are you confident that the notes are

1 accurate? I know they're not a detailed rendition
2 like a tape recorder.

3 Are they an accurate rendition of the
4 substance of the conversation?

5 A I believe they're an accurate rendition of
6 the substance. They're certainly an accurate
7 rendition of the conversation in early February,
8 1994, when I put it together. And I believe they're
9 an accurate rendition of the events as they occurred
10 six months before that.

11 Q Did you, by the way, later that evening
12 have a call from Charley Hume?

13 A Yes, I did. He's the Park Police Guy. I
14 don't remember what the substance of that call was.

15 Q Because of the way the Xeroxing is done, my
16 copy ends with, return and brief PH. And then it
17 says, late call from Charley Hume.

18 A That's a note that that happened late on
19 the evening of Wednesday the 21st.

20 Q Also, if I direct your attention to the
21 marginal notes along the side, and I want to --
22 actually, I'll take the opportunity now just to go

1 back to the beginning of the notes and follow through
2 them to see whether we've exhausted your recollection
3 regarding to the events of the 21st of July.

4 The notes begin with the heading Wednesday,
5 21, with PH arrow RA.

6 Was it your convention in writing notes
7 when you have an arrow between one set of initials
8 and another, to indicate these are words, the
9 substance of words being communicated by the person
10 on the left-hand side of the arrow to the person on
11 the right-hand side of the arrow?

12 A Yes.

13 Q Is it fair to say that, as we look at the
14 main part of the text, to the right of the margin
15 before the break, the first portion of it relates to
16 conversations that you had concerning the question of
17 whether Mr. Adams -- Mr. Adams having a concern about
18 the appearance of his handling the problem?

19 A That's correct.

20 Q And is it fair to say that, as of 3:00 on
21 that day, you had resolved the fact that there was no
22 problem with that?

1 A Yes.

2 Q Now, directing your attention to the next
3 several lines, would you tell me if, with that as an
4 aid to refreshing your memory, you can give any
5 additional detail concerning your discussions with
6 either Mr. Adams or Mr. Margolis on the 21st?

7 A I don't think they add anything to what
8 I've said. The instructions were to look at the
9 documents. It says, be satisfied by looking at first
10 page. That would not always be true, as I think
11 you've brought out. But hopefully, in many cases,
12 they'd be able to just look at even the title of the
13 first page and see that it was not relevant.

14 And I obviously was telling them to involve
15 the Park Police because the notes say, meet with
16 Capt. Charles Hume and set up procedure to check for
17 relevance and executive privilege.

18 Q And then when you have at the bottom, DM to
19 PH, I want FBI and PH to CH, bring in FBI. CH,
20 they're in.

21 Is that a shorthand record of a series of
22 conversations in which Mr. Margolis and you and Mr.

1 Hume discussed the FBI?

2 A That's correct.

3 Q Can you just give us your --

4 A What this indicates -- one of the things
5 that I'm least confident about about these notes is
6 who initiates the conversation, though the arrow was
7 intended to suggest at this point that David Margolis
8 said to me that he wanted the FBI in this
9 investigation, that we should have the FBI in.

10 I agreed with him and the second reference,
11 PH arrow CH, means that I called Capt. Hume at the
12 Park Police and asked him if he objected to bringing
13 in the FBI, and he responded to me that he had
14 already done that himself.

15 Q Now, as I move to the left of the margin,
16 and my copy is cut off, so I'm going to ask you to
17 read the notations from top to bottom, what is the
18 first notation?

19 A It says -- I'm trying to figure out how I
20 got into this in the first place. And it says,
21 assume that Heymann has called Bernie Nussbaum at
22 suggestion of question mark.

1 I now believe that was probably at the
2 suggestion of the Attorney General. But the question
3 mark indicated that I can't remember at whose
4 suggestion I had called Bernie Nussbaum.

5 Q Now below that, there's a quote. Could you
6 read the quote?

7 A The quote says, anything to do with his
8 violent death. And that is the standard of what would
9 be considered relevant.

10 Q Was that something you communicated or that
11 was discussed between yourself and Mr. Nussbaum?

12 A No. This would have been between -- the
13 fact that it is written opposite PH, the little dot
14 means, and Roger Adams and DM, David Margolis, means
15 that it would have been what I would have instructed
16 them was the standard of relevance.

17 Q And then below that, the notation.

18 A Waiting for a call from Park Police. I
19 think that's what seems to be holding us up. I think
20 we're waiting to send them over to the White House
21 for a call from the Park Police.

22 I don't know what was behind that call, but

1 we're waiting for the Park Police to call and they
2 finally call, and at 5:00, they go.

3 Q And then below 5:00, it says, Park Police
4 not allowed into the office, which is secured.

5 What did that refer to?

6 A David Margolis and Roger Adams explained to
7 me that the Park Police had wanted to go into the
8 office, I believe, but they were told that they
9 couldn't go in and that the office would be kept
10 secure by the Secret Service.

11 Q And this was related to you by Mr. Margolis
12 and Mr. Adams, when they came back from the
13 department.

14 A Yes.

15 Q Was Cindy Monaco --

16 MR. KRAVITZ: You mean from the White House.

17 MR. CHERTOFF: From the White House. I'm
18 sorry. From the White House.

19 BY MR. CHERTOFF:

20 Q Was Cindy Monaco present during this
21 debriefing or any of these discussions with Mr. Adams
22 and Mr. Margolis during the day?

1 A That I would never be able to remember
2 under the most intensive hypnosis because she was the
3 staff assistant who was allowed, the only one who was
4 allowed to wander in and out of my office whenever
5 she wanted to to pick up papers, put something in the
6 center of my desk and say, you have to sign this now.

7 Sometimes she was present. Sometimes she
8 wasn't present. I couldn't keep track of that at
9 all.

10 Q Was it your practice to discuss with her at
11 the end of the day things that had happened to keep
12 her informed about various significant events?

13 A I don't think it was a practice. At the end
14 of the day, I might.

15 Q Do you remember whether you discussed the
16 events of that Wednesday with her at the end of the
17 day at some point?

18 A I don't remember.

19 MR. LUSKIN: Off the record.

20 (Discussion off the record.)

21 (Recess.)

22 MR. CHERTOFF: Back on the record.

1 BY MR. CHERTOFF:

2 Q In your conversations with Mr. Adams and
3 Mr. Margolis on the evening when they returned from
4 the White House, did Mr. Adams say anything to you
5 concerning his understanding that nothing would
6 happen with the documents until he and Mr. Margolis
7 had returned to be present for the document review?

8 A I don't remember yes or no. I don't
9 remember yes or no. I don't remember one way or the
10 other.

11 Q All right. Now let me direct your attention
12 to the next day, Thursday, July 22nd.

13 Did you see Mr. Margolis and Mister --
14 actually, before we go forward, let me mark as PH-1,
15 the copies of your notes we just had copied.

16 (The document referred to was
17 marked for identification as
18 Deposition Exhibit No. PH-1.)

19 BY MR. CHERTOFF:

20 Q And for the record, you previously compared
21 these to Exhibits F-160 through F-165.

22 Okay. Directing your attention to the next

1 day, which is Thursday, July 22nd, did you see
2 Mister -- and feel free to use your notes. Did you
3 see Mr. Adams and Mr. Margolis before they went to
4 the White House?

5 A I believe so.

6 Q Do you remember a conversation you had with
7 them?

8 A No.

9 Q Do you remember when they went to go to the
10 White House?

11 A My notes indicate that they were to be
12 there at 10:00 a.m., and I remember that that was
13 right.

14 Q What's the next thing you remember
15 happening in connection with this matter?

16 A I was in a meeting in the large deputy
17 conference room when I got a phonecall. There's a
18 phone in that room. I went over and picked it up.

19 I think it was David Margolis. He said that
20 Mr. Nussbaum had told him that there was a change in
21 plan, that only Mr. Nussbaum would look at the
22 documents, that they would not be also reviewed by

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1 the investigators in this limited way I described.

2 That he had asked Mr. Nussbaum whether Mr.
3 Nussbaum had talked to me about that. And Mr.
4 Nussbaum had said, no.

5 Now I said at that point to Mr. Margolis,
6 would you put Mr. Nussbaum on the phone? He put him
7 on the phone.

8 I was both angry and adamant. It seemed to
9 me a terrible mistake that was being made, a mistake
10 that would undermine credibility very substantially.

11 I told Mr. Nussbaum that and I told him
12 that I wasn't at all sure that I would allow Adams
13 and Margolis to remain there if he continued on that
14 path because what would they be doing? They would
15 simply be sitting and looking like they were playing
16 a role when they weren't playing a role.

17 So I was concerned about the Justice
18 Department being in that posture.

19 Mr. Nussbaum was taken aback by how angry
20 and adamant I was and he said to me, Phil, I'll have
21 to talk to some people about this and I'll get back
22 to you on what we're going to do.

1 I believe that I asked him to put Margolis
2 back on the phone after that. What I'm about to
3 describe might have taken place before I talked to
4 Mr. Nussbaum.

5 We talked about what would happen if,
6 indeed, the signals were changed. I am aware from the
7 Independent Counsel's office that Mr. Margolis and I
8 have different memories, though I can easily imagine
9 some confusion there. Mr. Margolis remembers that I
10 said to him, if worse comes to worse, we'll have to
11 stay, and that would have been a plausible thing to
12 do as long as we made clear that we played no useful
13 role. We would at least be able to see what was done.

14 I don't remember saying that. But there
15 could easily have been confusion between the two of
16 us.

17 I then went about my business. I think I
18 was chairing a very large conference that day outside
19 of the Department of Justice. And I never got a call
20 back from Mr. Nussbaum, although he had assured me
21 that he would call me back and tell me what he
22 planned to do and allow me to make a decision as to

1 what I would do.

2 Q Did you try to call him?

3 A I did not.

4 Q Why not?

5 A Because I was chairing a large conference
6 and I probably didn't think about it much. And I also
7 thought that I had an understanding that nothing
8 would happen without my at least being informed and
9 having an opportunity to react.

10 Q So your assumption was that while you were
11 not hearing anything, nothing was going forward.

12 A That was very clearly my assumption.

13 Q I'd like you to just go back and review
14 your testimony up to now.

15 In the conversation where Mr. Nussbaum
16 indicated to you that there was going to be a change
17 in the plan and the investigators would not be able
18 to see the documents, when you say the investigators,
19 do you include in that Mr. Adams and Mr. Margolis?

20 A Yes.

21 Q You mean all law enforcement personnel.

22 A Yes.

1 Q What discussion did you have concerning the
2 understanding you had had with Mr. Nussbaum the night
3 before, or the day before?

4 A Well, as I said earlier, Mr. Chertoff, I
5 didn't feel that this was a contract between the two
6 of us, and he plainly -- and Mr. Nussbaum was not
7 arguing that this was other than a change in what we
8 had agreed the day before.

9 He described it as a change. I made clear
10 that that changed our role and it changed my
11 willingness to have Margolis and Adams there playing
12 a role.

13 And when he saw that and saw how I felt
14 about it, he indicated that he would re-open the
15 issue with whoever it was he had to re-open it with.

16 Q As of the time of that call on the 22nd,
17 you had already heard from Mr. Margolis and Mr. Adams
18 that the night before, Mr. Nussbaum had re-affirmed
19 that it was a done deal.

20 Correct?

21 A Yes.

22 Q Did you raise that issue with him, with Mr.

1 Nussbaum, on the phone?

2 A No. The reason, again, is -- I hope I'm
3 being clear. I didn't regard this as a promise. The
4 only thing I regarded as a commitment was that
5 nothing would happen without getting back to me after
6 our phone conversation.

7 I would have felt free the following
8 morning to say I wanted the system to be different. I
9 would have felt a little badly about changing the
10 plan, but I wouldn't have felt that I was committed.

11 Q Had you been told about Mr. Nussbaum's
12 change in plan before 10:00 a.m., on the 22nd, would
13 you have sent Mr. Adams and Mr. Margolis over?

14 A I think not. Again, I didn't have that
15 choice to make. I think I would not have.

16 Q Did Mr. Nussbaum give you any explanation
17 in this conversation that took place at around 10:30
18 in the morning, about why he had changed his mind?

19 A I don't remember an explanation. There may
20 have been one. It would not have been anything
21 extensive. I don't remember it at all.

22 Q Why were you angry?

1 A I said earlier, Mr. Chertoff, that I've
2 been through a lot of these and I know that there's a
3 right way and a wrong way to handle reconciling law
4 enforcement needs with executive privilege. I know
5 that there's going to be speculation and political
6 attacks.

7 We'd just gone through Travelgate and I've
8 gone through this a hundred other times. And I know
9 that the process that's being described is using the
10 Justice Department as window dressing.

11 So everything that's important to me about
12 the handling of this tragedy, otherwise it could be
13 handled completely by the District of Columbia or
14 Virginia or anybody else just as well, is being done
15 wrong.

16 I know that we're going to live forever
17 with credibility problems. I don't want the Justice
18 Department to be used as window dressing. I'd rather
19 that the Justice Department isn't there at all if
20 it's going to be used as window dressing.

21 I thought we had this worked out sensibly
22 and intelligently.

1 Q You mentioned Travelgate. If I could just
2 digress a moment and ask you what was in your mind at
3 this point in time, or what had been in your mind
4 before this point in time concerning Travelgate as it
5 bore on the question of the perception of the
6 Department of Justice.

7 Would you give us like a capsule of what
8 that is?

9 A Basically, what seemed to me to be simply
10 clumsy handling in the White House of the Travelgate
11 matter had resulted in endless demands for
12 independent counsel, further review, committee
13 hearings.

14 So, number one, that was very much in my
15 mind.

16 And number two, I thought that the serious
17 mistake in Travelgate was for the White House to have
18 called the top level of the FBI and an even worse
19 mistake was the top level of the FBI to respond and
20 get in their cars and come over.

21 I thought Travelgate should have been
22 handled -- first of all, they should have called the

1 D.C. Police and if they didn't call the D.C. Police,
2 they should have called the Washington field office
3 of the FBI. And if they called headquarters,
4 headquarters should have said, we'll send over the
5 Washington field office of the FBI.

6 So I was very anxious in this case to make
7 sure that we were dealing at the working level with
8 the Park Police and the Washington field office of
9 the FBI.

10 Q What did you see as the problem with them
11 having called the headquarters of the FBI as opposed
12 to the Washington field office?

13 A I know that there are going to be both
14 conspiracy theorists and political opponents who are
15 going to play with whatever involves the death of a
16 White House aide.

17 Q I'm talking about Travelgate now. I'm
18 sorry. I'm back in Travelgate.

19 A Okay. The problem, again, is it looks like
20 the closer you get to the top of the investigative
21 agency or the Department of Justice, the more
22 susceptible it looks to political manipulation or to

1 being improperly influenced.

2 The further down you are, the more you're
3 dealing at a routine level, the easier it is to tell
4 whether everything is being done in the normal
5 fashion.

6 Q Wasn't, though, a policy of the department
7 as of the time that the new Administration came in
8 that, at least in the first instance, contacts
9 between the White House and law enforcement ought to,
10 the initial point of contact ought to be at the very
11 top of the department, with either the Attorney
12 General or the deputy?

13 A I had written that policy. It wasn't
14 intended to apply to victim situations. There was
15 some confusion as to whether it should have applied
16 in Travelgate or not.

17 But I think if somebody had broken into the
18 White House and stolen computers, it would have been
19 reasonable for the White House to pick up the phone
20 and called the D.C. police without going through the
21 Attorney General or me.

22 It was intended to deal with situations

1 where the White House either wanted to communicate
2 its views on an investigation where it was not a
3 victim. And there, it was intended to block the
4 communication.

5 Q All right. Now let me return you to the
6 22nd.

7 You said you didn't hear anything further
8 from Mr. Nussbaum during the balance of the day
9 until, let's say, the evening.

10 During the course of the day, did you call
11 the White House to try to reach either Mr. Margolis
12 or Mr. Adams?

13 A I don't recall. I didn't speak to them. But
14 I don't recall whether I tried to reach them or not.

15 Q What's the next thing that happened on that
16 day in connection with the review of Mr. Foster's
17 documents?

18 What's the next thing you became involved
19 in?

20 A The next time I become involved, Mr. Adams
21 and Mr. Margolis appear in my office late in the
22 afternoon, about 5:00 or 6:00, and they report that

70

1 at around sometimes between 1:00 and 2:30, Mr.
2 Nussbaum had returned and told them that the review
3 was to be done with only he looking at the documents,
4 his way, and that they and the agents were to sit on
5 the other side of the room and not watch.

6 And they gave me a description of how it
7 had gone. They were offended and upset by the way it
8 had gone.

9 Q What else did they say to you?

10 A They described in particular a moment when
11 one of the agents had stood up to stretch or for one
12 reason or another and one of the assistant White
13 House counsel had said to him, are you trying to look
14 at the documents? Are you trying to look at what's
15 on the computer? And had done that in a way that
16 offended the agents substantially.

17 And Margolis told me that he had asked that
18 the office be secured that night and Mr. Nussbaum had
19 said he can't keep the office secured or the
20 documents segregated any longer.

21 I should add one other thing before that
22 and that is they explained that the documents that

1 were purely personal, and apparently, Mr. Foster was
2 handling the personal legal affairs of the Clintons,
3 too, had been turned over to the Clintons' personal
4 lawyer on that occasion while they were there.

5 Q Let me stop you for a minute and make sure
6 you're --

7 MR. BEN-VENISTE: No.

8 THE WITNESS: I'm sorry. I've got that
9 wrong. I'm sorry. Okay. I'm sorry.

10 Important wrong. Excuse me.

11 BY MR. CHERTOFF:

12 Q Take a moment and collect your thoughts and
13 tell me what your recollection is about this last
14 question.

15 A They told me that Vince Foster's personal
16 notes -- this is plainly correct. I was just off
17 badly.

18 Q Just to make the record clear, your
19 reference to Clinton personal documents and lawyers
20 was in error.

21 A That's correct.

22 Q You misspoke.

1 A I misspoke. It was the Vince Foster
2 personal documents that had been turned over to
3 Foster's personal lawyer, who is Jim Hamilton.

4 I had that all wrong. Okay.

5 Q Okay.

6 A And Margolis told me, I believe, that he
7 approved of that. He thought that that was an easier
8 place for us to get access to them if we needed them.

9 Q Do you remember in particular with respect
10 to the discussion of how Mr. Foster's personal
11 documents were turned over to Mr. Foster's personal
12 lawyer on the spot, so to speak, whether Mr. Margolis
13 recounted to you a conversation he had had with any
14 of the agents concerning whether he should permit
15 that to happen?

16 A I don't remember that, no. He may have,
17 but I just don't remember.

18 Q I want to direct your attention to your
19 notes, PH-1, page 3, where it says, "Give them to
20 family lawyer and get them out of BN's hands."

21 To what does that refer?

22 A I believe that refers to Mr. Margolis's

1 explanation to me as to why he thought it was fine
2 for the documents to go to Mr. Hamilton, that
3 basically they would be easier for law enforcement to
4 get access to if we needed them, in the hands of the
5 personal lawyer than in the hands of the White House
6 counsel's office.

7 Q What was your understanding of what he
8 meant by that?

9 A I think he meant there wouldn't be
10 arguments about executive privilege or things like
11 that.

12 Q Did he indicate to you either on the 22nd
13 itself, in the evening, or at some later time, when
14 you discussed it with him, that either he or one of
15 the agents had the opinion that they would rather
16 trust the family lawyer to get them the documents
17 than Mr. Nussbaum?

18 A I just can't remember well enough, Mr.
19 Chertoff. I mean, it sounds vaguely familiar, but I
20 just can't remember.

21 Q Now, what was the description that you were
22 given by Mr. Margolis and Mr. Adams of the way in

1 which this review had actually occurred?

2 MR. LUSKIN: Before we go on there, I'd
3 like, if possible, to clarify, because there's some
4 suggestion that this remark from Margolis -- some
5 confusion about whether it related to their believing
6 that there was some personal untrustworthiness on the
7 part of Mr. Nussbaum or whether it related to issues
8 of executive privilege, which would obviously be
9 obviated if the documents were in the hands of a
10 third party.

11 And it may be good to clarify that.

12 MR. CHERTOFF: That's why I wanted to ask
13 you. I'll ask you again.

14 BY MR. CHERTOFF:

15 Q Did Mr. Margolis or an agent indicate to
16 you that they believed that they would rather get the
17 documents -- that they felt they could trust the
18 Fosters' personal lawyer more with documents than Mr.
19 Nussbaum?

20 A I don't think it was an issue of the
21 trustworthiness of the individual. I think it was an
22 issue of getting them away from claims and claimants

1 of executive privilege.

2 Q I'm going to read you a passage from a
3 deposition of Ms. Monaco, and I'm going to ask you
4 simply whether you've ever had a comparable
5 discussion to this with Mr. Margolis, at any time
6 after July 22nd.

7 Page 85, line 7.

8 Did he tell you that some documents had
9 been given to the Foster family's private attorney to
10 be taken back to the family?

11 Answer: Yes, and he told me that was done
12 at the suggestion of the FBI.

13 Question: What was his view of that?

14 Answer: He said that the thought it was
15 pretty sad that an FBI agent would say, I trust Mr.
16 Foster's personal attorney more than I'd trust the
17 President's counsel to handle these documents.

18 Question: What did you understand him to
19 mean by that remark?

20 And then the lawyer representing Ms. Monaco
21 asked, The FBI agent?

22 Question: Let me back up and ask you this.

1 Mr. Margolis didn't tell you that the agent
2 specifically said, I trust the Foster family attorney
3 more than the President's counsel, did he?

4 Answer: Yes, he did.

5 Question: Oh, he did? Then I'm correct.

6 Then as best as you can recount, what were you told
7 by Mr. Margolis? What did Mr. Margolis tell you the
8 agent said at the time that the issue of the handling
9 of the personal papers came up?

10 Answer: I think, as I recall, Bernie
11 Nussbaum suggested that they be put off or that
12 Bernie would keep them, or something to that effect,
13 and that an FBI agent asked to ask with David
14 privately. And I don't recall if they went out in the
15 hallway. But it was such a small office, that my
16 sense is that they did.

17 And he said he preferred that they be put
18 in the hands of Mr. Hamilton because he trusted Mr.
19 Hamilton more with those documents.

20 Question: Mr. Hamilton and his firm were
21 the attorneys for the Foster family?

22 Answer: I believe that's correct and I

1 believe his name was already known as the firm
2 handling the family's personal affairs.

3 Question: And accordingly, did Mr. Margolis
4 agree to have the Hamilton firm take custody of the
5 personal documents?

6 Answer: I believe he told me they did.

7 Did you ever have a conversation about that
8 incident in that way with Mr. Margolis?

9 A I just don't remember anything beyond what
10 I told you, Mr. Chertoff.

11 Q So you don't remember one way or the other?

12 A No.

13 MR. BEN-VENISTE: Now let me note my
14 objection to this procedure for the same reasons
15 that, really, I placed on the record earlier in
16 another context.

17 And that is, that now, this material from a
18 nonparticipant to the conversation, Ms. Monaco, will
19 sail into the public hearing because it will be a
20 part of Mr. Heymann's deposition transcript, where a
21 procedure could have been used to have Mr. Heymann
22 simply review the printed transcript and comment

78

1 about whether it would refresh his recollection or
2 not, to review what Ms. Monaco had to say about
3 events that she was not a party to.

4 Now we have this rather unfair
5 characterization that this Witness has not ascribed
6 to of a reason why something was done or a reason why
7 something which occurred contemporaneously was
8 thought to be by Mr. Margolis a more appropriate way
9 of going forward.

10 And that is, according to this witness,
11 that claims of executive privilege with regard to the
12 material that was segregated for delivery to the
13 Foster family attorney, would be obviated because
14 they were delivered to someone outside of the
15 Executive Branch.

16 Now, instead, we have this record cluttered
17 with the irrelevant musings of an individual who
18 appears to have an axe to grind.

19 Now --

20 MR. CHERTOFF: May I --

21 MR. BEN-VENISTE: No. Don't interrupt me
22 just now, please, because I feel pretty strongly

1 about the fairness of this procedure.

2 MR. CHERTOFF: I do, too, Mr. Ben-Veniste,
3 and I don't need constant instruction from you on
4 this.

5 MR. BEN-VENISTE: And please don't
6 interrupt me. Please don't interrupt me. I'd like to
7 finish my observation for this record.

8 It adds nothing to the record to read into
9 it this kind of material.

10 Mr. Nussbaum will have to stand or fall
11 before this Committee in terms of his explanations of
12 why he did certain things. But I think it is less
13 than fair to have in this transcript, which will be
14 made public, as we all understand, in the course of
15 Mr. Heymann's testimony before the Committee, to have
16 this kind of implication about Mr. Nussbaum's honesty
17 spread out on the record in this way, where this
18 Witness does not ascribe to it.

19 MR. CHERTOFF: First of all, Mr. Ben-
20 Veniste, the practice of reading depositions of other
21 witnesses to witnesses has been used by both sides in
22 many of the depositions that have taken place up to

1 this point in time.

2 Ms. Monaco's deposition is part of the
3 record of this proceeding and will ultimately be made
4 public as well.

5 I think that I don't know whose
6 recollection is correct and I'm not making a decision
7 whose recollection is correct.

8 I think I'm entitled -- in fact, I think
9 I'm almost obliged, as a matter of fairness. And I
10 want to say, Mr. Ben-Veniste, that I don't think you
11 have reason to doubt my commitment to fairness.

12 In any case, I will tell you that I'm as
13 committed to fairness as you are.

14 Nevertheless, I'm also committed to
15 thoroughness. Given the fact that this is part of the
16 public record, that a witness has recounted her
17 conversation with Mr. Margolis under oath, given the
18 fact that the witness may well be testifying at the
19 hearing, given the fact that we hope that Mr.
20 Margolis will be testifying at the hearing, I think,
21 in fact, it's quite fair to give Mr. Heymann an
22 opportunity to either agree or disagree that he's

1 ever had a conversation like this with Mr. Margolis.

2 We will ultimately find out whether Mr.

3 Margolis himself recalls saying it, whose

4 recollection is firm or whose recollection is to be

5 credited.

6 If you want to have a rule from this point

7 on that we will not read portions of other witnesses'

8 depositions in a second witness's deposition, I'm

9 amenable to agreeing to that. But it has not been a

10 rule up to this point in time.

11 What I think is not useful is for you to

12 take the opportunity to attack the other lawyer

13 personally or to suggest somehow that there's a

14 desire to be unfair, particularly since what I'm

15 reading into the record is that which is already part

16 of the record and which will become part of the

17 public record.

18 MR. BEN-VENISTE: All right. Now you made

19 the distinction that I was going to call your

20 attention to. And that is what is part of the public

21 record now, as opposed to what some day may be a part

22 of an eventual public record.

1 Ms. Monaco's deposition, insofar as I know,

2 it's not part of the public record. As it is now, it

3 is a confidential record.

4 And my concern is, because I don't

5 represent Bernie Nussbaum, nor does he have a

6 representative in this room, and it is not my

7 function to represent Bernie Nussbaum.

8 That is a task and an obligation and a duty

9 assigned to other.

10 But I do have an obligation, I think, to

11 try to the best I can to maintain a level playing

12 field here. And I don't think that you have shown Mr.

13 Heymann material improperly. And I don't think that

14 you would do that. And I'm not in any way asserting

15 that you are not a fair person or you have not acted

16 fairly in connection with these hearings or

17 proceedings because my opinion is exactly the

18 opposite.

19 What I am suggesting is that the procedure

20 of spreading on the record material that has a high

21 charged content in terms of assailing the honesty of

22 an individual, in this case, Mr. Nussbaum, to which

1 this witness doesn't agree, could have as easily been
2 done by showing him the printed word in the
3 transcript of Ms. Monaco's deposition, and asking him
4 whether that refreshed his recollection in any way.

5 That's the point that I hope to make and
6 that's the point that I hope you take. And it is not
7 an attack on you personally because you know I won't
8 do that.

9 MR. CHERTOFF: Given that this deposition
10 is also confidential and is held in exactly the same
11 circumstances as Ms. Monaco's deposition, I think
12 maybe the answer to this is, at the time of the
13 hearings, whoever's asking the questions is going to
14 have to decide of whom they're going to ask the
15 particular questions.

16 And probably, the answer is to simply hear
17 all the different points of view.

18 By the way, I'm not indicating in any
19 sense, and I don't want you to mistake this, that by
20 my reading Ms. Monaco's deposition, I'm adopting any
21 particular view of what Mr. Margolis said. And still
22 less am I in any way suggesting that I have any

1 personal view of Mr. Nussbaum's integrity.

2 That clearly is not what I'm doing.

3 MR. LUSKIN: Can I make one further
4 clarification because there's some implication here
5 that there is a divergence of recollection. I don't
6 understand there to have been a foundation laid for
7 Professor Heymann having been present when Mr.
8 Margolis allegedly said this to Ms. Monaco.

9 MR. CHERTOFF: Yes, that's quite right.

10 MR. LUSKIN: And I want to be very clear
11 here that there might be the assumption that somehow,
12 there was a group meeting at which this was reported.
13 All I understand is that these depositions excerpts
14 were read to see whether it refreshed Professor
15 Heymann's recollection about a conversation he may
16 have had with Mr. Margolis.

17 MR. CHERTOFF: That's right.

18 MR. LUSKIN: Either in Ms. Monaco's
19 presence or not in his presence.

20 MR. CHERTOFF: That's right.

21 MR. LUSKIN: But not the suggestion that
22 somehow, he was present at this conversation and now

1 doesn't recall it.

2 MR. CHERTOFF: It's perfectly possible, and
3 I hope I didn't leave a contrary implication, that
4 Ms. Monaco's recollection, which is not tied to a
5 particular meeting, could refer to an interchange
6 that you weren't present for.

7 All right. Now, if we can move along.

8 BY MR. CHERTOFF:

9 Q Getting back to the conversation that you
10 had with Mr. Adams and Mr. Margolis on the evening of
11 the 22nd.

12 What did they tell you about the manner in
13 which this review of documents had been conducted?

14 A I remember that they were hurt and felt a
15 little bit less than degraded, but almost degraded by
16 the way it was done. And they were angry.

17 And I remember their telling it to me in a
18 way that they must have known was calculated to make
19 me angry. And I don't get angry very quickly.

20 They described the agents and themselves
21 being kept at a substantial distance, that Mr.
22 Nussbaum, Mr. Sloan, whoever else was there looking

1 at documents, sometimes quickly, often quickly,
2 looking in the briefcase in which the note was
3 finally found and looking at a document and saying,
4 this isn't pertinent. This isn't pertinent. This is
5 about such and such a subject. This isn't pertinent.

6 And their not having any role at all to
7 play with regard to decisions made about the
8 documents.

9 Q Did they mention a computer, any incident
10 that had occurred with a computer?

11 A They did mention that they had asked about
12 checking the computer and Mr. Nussbaum had said, not
13 with them there, or he wouldn't do it with them
14 there.

15 Q What discussion, and I want to caution you.
16 I don't want to color this recollection with what
17 subsequently occurred. At the time, what did they
18 tell you about Mr. Nussbaum's looking at the
19 briefcase or through the briefcase?

20 A They didn't tell me anything at that time
21 about it, to the best of my memory.

22 Q Was there a later point in time that they

1 discussed it with you?

2 A Yes. I'm sure that a few days later, when
3 the note was found, we would have had all sorts of
4 discussions about what was it like when they were
5 searching on the 22nd.

6 Q And do you remember what Mr. Margolis and
7 Mr. Adams told you at that time about what they
8 recalled about what happened on the 22nd?

9 A Memory is only about 60 percent clear, Mr.
10 Chertoff, but I remember them saying that he looked
11 in the briefcase, removed documents, and said,
12 there's nothing else in here, and went on.

13 Q Taking you back now still to the 22nd, in
14 the evening with Mr. Margolis and Mr. Adams, what did
15 they tell you about how it is they come to go along
16 with this procedure in the early afternoon?

17 A I don't think we had any discussion of how
18 they'd come to go along with it. I remember thinking
19 they shouldn't have gone along with it. But they had
20 gone along with it. And they're people that I trust
21 very much and I trust their judgment as well as their
22 honesty.

88

1 So I did not take the occasion to say, why
2 didn't you walk out?

3 I had later asked Mr. Margolis whether Mr.
4 Nussbaum said that I had agreed to this. And he said,
5 no, Mr. Nussbaum had not told him that I had agreed
6 to it, and he would have known that that was not so,
7 in any event.

8 And again, I know from the independent
9 counsel investigations that Mr. Margolis thought that
10 as part of the morning conversation, I had said to
11 him, I had authorized him to remain, if it really
12 came down to a White House insistence on proceeding,
13 despite my threat of pulling them out.

14 That is not my memory, but I know that Mr.
15 Margolis's understanding that he was authorized to
16 remain.

17 Q Is there anything else you recall about
18 that discussion in the evening of the 22nd with Mr.
19 Margolis and Mr. Adams?

20 A Let me see.

21 (Pause.)

22 The notes have crossed out a bit of an

1 exchange between Mr. Nussbaum and Mr. Margolis. I
2 never knew quite whether to take seriously or not
3 where Mr. Margolis says, in response to the new
4 process, that if this were Xerox instead of the White
5 House, he would have a subpoena to demand the
6 documents.

7 I believe that I was told at that time that
8 Mr. Nussbaum said that if this were Xerox, that they
9 wouldn't have kept the documents the way the White
10 House had kept them.

11 This was not taken as a personal
12 recommendation. This was a debate between two
13 lawyers.

14 Q Let me get your attention to the notes.
15 There's one section we haven't covered yet where, in
16 the middle of the page, right before, it says 1:00 to
17 2:50.

18 And I gather, by the way, 1:00 to 2:50 is
19 the period of time they told you that they had been
20 in Mr. Foster's office.

21 A I think that they were probably in the
22 officer longer than that, Mr. Chertoff. I think that

1 they guessed it was sometime between 1:00 and 2:30.
2 I'm just trying to interpret my own notes, that Mr.
3 Nussbaum came back and told them that we're going to
4 do it his way.

5 Q Okay. I'm sorry. When I say, Vincent
6 Foster's office, I meant in his actual office, as
7 opposed to in his suite.

8 But if you don't know --

9 A I do not know when they were with him.
10 MR. LUSKIN: I understand that he's saying
11 something affirmatively different. That this is a
12 period of time in which they are waiting before going
13 back in.

14 MR. CHERTOFF: Right.

15 BY MR. CHERTOFF:

16 Q But you're not saying that they were
17 waiting in Mr. Foster's office.

18 A No. They told me something about waiting
19 outside and there being some concern that they were
20 leaving because I had threatened that I would call
21 them out, that I would call them back.

22 Q Well, then, let me direct your attention to

1 that portion of your notes where it says, BN arrow
2 DM. Don't leave.

3 And if you'd read that little paragraph to
4 yourself. What does that refresh in your memory?

5 A Mr. Margolis said to me that, at some point
6 around, something within an hour or two of noon, he
7 and Adams were -- suddenly, Mr. Nussbaum appeared and
8 was worried that they were leaving the White House.

9 Again, I had threatened that I would pull
10 them out.

11 And I guess it says, panicked by Bernie
12 Nussbaum and CS, Cliff Sloan, thinking that they had
13 left. I guess they had gone to some place in the
14 White House where they were, and had left where Mr.
15 Sloan expected to find them, and he'd gone and told
16 Mr. Nussbaum that they have left this place.

17 Q Now, as a consequence of the conversation
18 that you had with Mr. Adams and Mr. Margolis that
19 evening, did you talk to anybody else that day about
20 the handling of the documents?

21 A When I went back to the apartment where I
22 was living, I was furious, again. And I picked up

1 the phone and I called Mr. Nussbaum at his apartment
2 at Watergate. And I said to him, how could you have
3 misused me this way? How could you have done this to
4 me?

5 I've known him for a very long time. He was
6 one year -- I knew him in 1960. I thought I had his
7 word that nothing would be done without my at least
8 being told about it and having the opportunity to
9 decide what the role of the Justice Department would
10 be.

11 And he had determined the role of the
12 Justice Department by not notifying me and not giving
13 me an opportunity to deal with the FBI agents, the
14 Park Police, and the two attorneys.

15 I don't know what he responded, other than
16 to say, well, we're sorry. We just did it. And I
17 remember saying to him, Bernie, are you hiding
18 something? Is there some terrible secret here that
19 you're hiding?

20 And he said, no, there's nothing like that.
21 I give you my word on that, Phil. There's nothing
22 like that.

1 But even, I guess, the change in manner of
2 handling the documents had made even a member of the
3 Administration and an old friend suspicious that
4 evening, and I asked him.

5 Q Was there anything else in the conversation
6 that you recall?

7 A No.

8 Q Did he tell you in that conversation that
9 documents that had been in Mr. Foster's office had
10 been removed and taken up to the White House
11 residence after Mr. Margolis and Mr. Adams had left
12 the Foster office?

13 A I would almost certainly remember if he had
14 and I have no such memory.

15 Q Is there anything else that day that
16 occurred with respect to the Foster documents on that
17 day?

18 A No.

19 Q Now I want to be clear on one thing
20 regarding this conversation at 9:00.

21 Was this conversation at 9:00, in response
22 to any press articles or media inquiries or some

1 notion of something that had happened with the
2 newspapers?

3 A No. The next day, something happens with
4 regard to the newspapers, but at this time, nothing
5 had happened.

6 Q Now let's go to the next day, which is
7 Friday the 23rd.

8 You did not go to the funeral, I take it.

9 A No.

10 Q What happened the next day regarding the
11 Vincent Foster documents?

12 A The Park Police informed us that the FBI
13 had sort of dropped out of any role in investigation
14 at that point.

15 The other thing that I remember happening
16 is David Margolis or someone else calling to my
17 attention a newspaper story, probably The Washington
18 Post, describing the events of the previous day as a
19 review of the documents carried out under the
20 supervision of the Department of Justice.

21 It didn't make much difference whether
22 Margolis and Adams stayed the prior day or left. What

1 did make a difference, and the only thing that made a
2 difference, is whether it appeared that the
3 Department of Justice was supervising an
4 investigation when it wasn't.

5 And so, I issued orders that the Department
6 of Justice press office announce that this was not,
7 that the Department of Justice did not supervise the
8 review of documents. I don't know the exact words,
9 but that we were not in control and had not handled
10 it and were simply observers.

11 Q Was that an official release by the
12 Department of Justice?

13 A It would have been released by Carl Stern.
14 But I don't have any memory as to whether -- I think
15 if it had been a press release, I would have probably
16 seen it and approved it.

17 I don't think I ever saw it.

18 Q Was it your intention to have Mr. Stern put
19 out a formal release or to merely have him contact
20 reporters and correct the record?

21 A The latter would have been entirely
22 consistent with my orders.

1 Q Did you talk to anybody at the White House
2 about this?

3 MR. LUSKIN: At that time.

4 THE WITNESS: This is a vague memory, Mr.
5 Chertoff, and I don't -- I remember hearing that they
6 were irritated by the Justice Department correction.
7 But I don't remember who I talked to or who told me
8 that.

9 BY MR. CHERTOFF:

10 Q Do you know whether you heard that from
11 someone in the White House or someone in the press
12 office at Justice?

13 A It would not have been from someone in the
14 White House.

15 Q At any later time, did you have any
16 conversations with anybody concerning the White
17 House's reaction on that Friday, when Carl Stern put
18 out this correction?

19 A I could have, but I don't remember.

20 Q Do you remember whether Carl Stern put out
21 the correction as in his own name, or whether it was
22 put out as a Justice Department source?

1 A I don't remember. I don't think I ever saw
2 it.

3 Q Did you discuss with him how you wanted to
4 have it handled?

5 A I think that I did it through Mr. Margolis.
6 I think I told Mr. Margolis to see to it that Carl
7 Stern corrected it and he would have talked to Carl
8 Stern in my name and I would have gone on to whatever
9 else I went on to.

10 Q What is the next thing that happened
11 regarding this matter?

12 A This isn't reflected in the notes, Mr.
13 Chertoff, but I was worried that the Park Police
14 would be able to carry out the investigation. Now the
15 FBI wasn't there.

16 Q I assume you mean you were worried they
17 wouldn't be able to, not that you were worried they
18 would be able to.

19 A Yes.

20 MR. LUSKIN: I thought he said that.

21 THE WITNESS: I was anxious that they be
22 able to and I wanted to know if there was any

1 problem. And in the ensuing days, once again, through
2 Margolis, I had Margolis check regularly with Capt.
3 Hume and others to see how they were doing and
4 whether they needed help.

5 And basically, I wanted to ask the
6 question, do you need my help?

7 And the word that was coming back was
8 something I couldn't read very well. I wanted -- I
9 obviously hoped that I would get a reaction that
10 said, don't worry. Everything's going fine.

11 They didn't ask for help and weren't asking
12 for help. But some of Margolis's reports of his
13 conversations with Hume always left me feeling that
14 things weren't going as well as they might. And I
15 finally said, well, find out whether this is being
16 handled like any other suicide investigation or
17 inquiry or inquest.

18 And I remember the response coming back, an
19 investigation that involves the White House is simply
20 not like any other suicide investigation, which
21 wasn't a bad answer.

22 And then -- I'll stop and see if you have

1 anything you want to refresh me about during those
2 days. The next thing that I know that happens on the
3 investigation is Tuesday night, the 27th, when I'm
4 probably meeting with Mr. Chertoff at that time.

5 MR. CHERTOFF: No. I've been asked about
6 this many times. I was on vacation. I just finished
7 trying a case.

8 MR. LUSKIN: This would probably be a good
9 time to break, if you don't have any follow-up
10 questions.

11 MR. CHERTOFF: I just have a couple of
12 questions and then we can break.

13 MR. BEN-VENISTE: Wait a minute.

14 (Discussion off the record.)

15 MR. CHERTOFF: Let me just cover a couple
16 of things.

17 BY MR. CHERTOFF:

18 Q Were you yourself at this time concerned
19 about whether the Park Police would be able to carry
20 out an investigation where they were dealing with,
21 obviously, very high-level White House personnel?

22 A Yes.

100

1 Q Also, let me just take you back, I'm sorry,
2 to the conversation you had in the kitchen of your
3 apartment on Thursday night, July 22nd, with Mr.
4 Nussbaum.

5 Do you recall whether you used the
6 expression with Mr. Nussbaum, that he had double-
7 crossed you?

8 A I don't recall whether I used that
9 expression or not. I think I noticed it -- I didn't
10 notice it in the notes.

11 I don't recall what I said at all. I can
12 visualize very accurately, very dramatically,
13 precisely where I was, where the phone was, walking
14 up and down and talking and being furious.

15 And I just know that I said, my feeling was
16 that I had been double-crossed.

17 I don't know whether I used that term.

18 MR. CHERTOFF: This would probably be a
19 good time for a break.

20

21 (Whereupon, at 12:59 p.m., the taking of
22 the deposition was recessed, to reconvene at 1:45

1 p.m. of the same day.)
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1 AFTERNOON SESSION

2 (1:58 p.m.)

3 MR. CHERTOFF: On the record.

4 Whereupon,

5 PHILIP B. HEYMANN

6 the witness being deposed at the time of recess,
7 having been previously duly sworn, was examined and
8 testified further as follows:

9 EXAMINATION (Continued)

10 BY MR. CHERTOFF:

11 Q Before we proceed forward to the 27th of
12 July, let me just go back to the 22nd for a moment
13 and direct your attention to your conversation with
14 Mr. Margolis and Mr. Adams that evening after they
15 returned from the White House.

16 Did Mr. Margolis tell you in that
17 conversation that he had requested Bernie to make a
18 detailed inventory of all the documents?

19 A I don't remember anything --

20 Q I don't think it's in your notes but let
21 me refresh your memory by showing you a copy of
22 someone else's notes that appeared sometime

1 thereafter.

2 A This is when they returned from the White
3 House on the 22nd?

4 Q Did you hear this from them?

5 Let me show you F158, at the top, and see
6 whether that statement refreshes your recollection
7 that you were told, at some point, that on the 22nd,
8 Mr. Margolis had requested Mr. Nussbaum to make an
9 inventory or indicated that he would make an
10 inventory if he were Mr. Nussbaum?

11 A I don't, I just don't remember anything
12 about this at all.

13 Q Now on Monday the 26th, were you aware at
14 all of the discovery of any writing by Vincent
15 Foster?

16 A No.

17 Q When did you first become aware of it and
18 how did you become aware of it?

19 A I was -- this was a little bit before I
20 first became aware of it -- from 5:00 to 5:30, I
21 believe, there was a meeting of the Attorney
22 General's Advisory Committee of U.S. Attorneys.

1 I was addressing them during that period,
2 and I got passed a note and the note may have simply
3 said, would I call Mr. Nussbaum.

4 When I left, I went out and called him and
5 he said that he'd like me to come over to the White
6 House and the Attorney General was coming at 7:00
7 o'clock.

8 He didn't explain why, though I assumed it
9 had something to do with the Vince Foster matter.

10 He said he particularly wanted me to be
11 there.

12 I never asked him why.

13 Q What happened next?

14 A I rode over with the Attorney General,
15 went over at about 6:30, quarter of 7:00. I think we
16 went into Mac McLarty's office.

17 To the best of my memory, only David
18 Gergen was there at first. We talked a little bit
19 about the Crime Bill or some piece of legislation.

20 Then Mr. Nussbaum came in.

21 Then -- I'm trying to think of who else --
22 Mr. McLarty I think, and I think Bill Burton was

1 there. I can't remember that for sure.

2 We sat on the -- there's a little sitting
3 area in the Chief of Staff's office, two couches
4 facing each other and a couple arm chairs. I
5 remember Mr. Nussbaum sitting on the couch, and
6 pulling out an envelope in which the yellow pieces of
7 paper were.

8 I don't think that he assembled it at that
9 time. It takes a little while to assemble them.

10 He said that these had been found the day
11 before. He had made a copy of what they say, and he
12 read aloud what the notes were.

13 The Attorney General said these should be
14 turned over immediately to the Park Police. There
15 was no argument about that.

16 The Attorney General asked why we were
17 getting them 27 hours, or whatever number of hours it
18 was, after they were found.

19 Mr. Nussbaum explained, or others
20 explained; I don't know which one was talking, that
21 they wanted to bring them to the attention of Mrs.
22 Foster and the President before doing anything

1 further with them.

2 And that they only could get at the
3 President, I think the evening of the 27th. He was
4 out in Chicago.

5 The Attorney General then left to go to a
6 dinner.

7 I called, I had by then called Margolis,
8 who was still at work, and asked him to get the Park
9 Police over here to the White House.

10 Mr. Nussbaum asked me to stay.

11 The Park Policeman seemed to take a while.

12 My notes say, as I'm looking at them, Mr.
13 Chertoff, that he assembled the note.

14 Oh, no, I'm sorry, that's later.

15 He asked me to stay. I stayed.

16 The White House people went off
17 themselves.

18 I sat and made a couple of phone calls to
19 my father and things like that.

20 About 9:00 o'clock, the Park Police guy
21 was there. I told everybody that we shouldn't keep
22 him waiting and we ought to get him up right away.

1 I went down and I sat with him, and told
2 him that he was going to be given a note, and that he
3 should ask whatever questions he wanted. I wanted
4 him to feel comfortable in the setting, which I
5 thought would be intimidating.

6 I walked up with him.

7 At that point, everybody moved over to a
8 conference table that looks about like this one which
9 is, I can't guess the length of it, a little shorter,
10 the conference table about ten feet long.

11 They sat around it, and Mr. Nussbaum
12 explained that he had found this note. This time he
13 did assemble it.

14 I was aware that in the course of
15 assembling it, it fell on the floor, and by the time
16 it had been reassembled, the fingerprints of
17 everybody in the White House were on it. So if
18 anybody wanted fingerprints, they had all the
19 fingerprints in the world.

20 They assembled it.

21 Bernie then read from his handwritten
22 version of the note.

1 He asked the Park Policeman to write down
2 what he was saying. I think the Park Policeman made
3 his own transcript of what Mr. Nussbaum read.

4 I then asked the Park Policeman, who I
5 think turned out simply to be a duty officer of the
6 night who hadn't worked on this before, if he had any
7 questions he wanted to ask, I wanted him to ask them.

8 And he said he didn't have any questions.
9 He was prepared to leave.

10 They gave him the note in a manilla
11 envelope.

12 And I asked him if he'd give me a ride
13 back to the Department of Justice and I rode back
14 with him to the Department of Justice.

15 Q During the course of that meeting with the
16 Park Police, did Mr. Nussbaum give a narrative of the
17 manner in which the note had been discovered?

18 A I'm afraid I've heard that narrative so
19 often that I can't remember.

20 Having said that, I would be surprised if
21 he hadn't, but I'm afraid I just heard it so often, I
22 can't remember when I first heard it.

1 I think, I'm a little more confident that
2 the answer is yes, he gave a description.

3 Q Well, do you remember whether any
4 description Mr. Nussbaum gave, he indicated that on
5 the previous night, on the 26th, Mrs. Clinton had
6 been brought into the office, and given an
7 opportunity to look at the note.

8 A I never heard that before now.

9 Q Never heard that before now?

10 A To the best of my memory, I haven't heard
11 that before now. At least I don't remember, don't
12 remember hearing that.

13 Q In any of the narratives you've heard, up
14 to this point in time, you don't recall ever hearing
15 that, to the best of your memory?

16 A At this moment, I do not remember hearing
17 it.

18 Q In the period of time -- well, even from
19 the period of time you --

20 A I think maybe that -- I'm sorry, Mr.
21 Chertoff.

22 Q Go ahead.

1 A I looked over the FBI investigation, which
2 I'm going to order the next day, of the finding of
3 the note, and I think perhaps that appears in there,
4 but I don't remember.

5 Q Okay, if you don't remember, it's better
6 not to speculate about it.

7 Other than that though, you have no
8 recollection of being told about that?

9 A No.

10 Q By the way, how did the note fall on the
11 floor, when Mr. Nussbaum was --

12 A Oh, it's just, it's little pieces, it's on
13 a glass table. I suppose if you simply, I simply
14 move a piece of paper, that would knock pieces on the
15 floor.

16 Q During the course of the time you were
17 there that evening, did you have any conversations
18 with Mr. Nussbaum about the events of the 22nd?

19 A No. I believe not.

20 Q After the Attorney General left, did you
21 have any private conversation with Mr. Nussbaum?

22 A After the Attorney General left, the White

1 House people sort of went off by themselves, they all
2 went off by themselves. And I seem to remember that
3 I sat for a couple minutes alone in Mr. McLarty's
4 office with nobody else there, and then I went out to
5 the secretarial area, and having nothing else to do,
6 picked up a phone and called my 88-year-old father.

7 They were all off some place else.

8 Q At any point in that evening, did you have
9 any private conversations with Mr. Nussbaum?

10 A Unless it was a passing remark, I don't
11 believe so.

12 Q Did you, in your mind, that evening,
13 associate the finding, the discovery of the note in
14 the briefcase with the events of the search or the
15 review of the documents on the 22nd?

16 A I know that by the following morning, I'm
17 associating the two and I'm quite dissatisfied
18 because of the combination of the two. I don't
19 remember whether that starts Tuesday night or
20 Wednesday morning.

21 Q Well, let's go forward to the following
22 day then.

1 What happened the following day which is
2 now Wednesday, the 28th?

3 A I believe that in the morning, I talked
4 with Margolis and Adams about the note having been
5 found and the search of the 22nd.

6 Q Is this the conversation which they've
7 told you that Mr. Nussbaum had indicated that he had
8 looked in the briefcase and there was nothing more
9 there?

10 A This was probably that conversation. They
11 certainly would have said it again if they had
12 already said it once before.

13 And at this point, I feel like we're
14 losing too much credibility in this investigation.
15 There's not, I don't like the note having been found
16 four days after the search. I don't like the 27-hour
17 delay.

18 When I say, I don't like it, each of them
19 are just slightly or mildly disturbing to me. I
20 didn't like the change on the 22nd, the change in
21 signals, I didn't like the way the search was carried
22 out.

1 And at this point, I think we have to do
2 something to make sure that things, that they are
3 simply mistakes being made, and that we're simply
4 faced a certain amount of clumsiness in the White
5 House.

6 Q I'm not sure I understand what you mean by
7 that last remark.

8 A What I'm trying to do, Mr. Chertoff, is
9 I'm trying to describe a collection of little things,
10 each of which I'm prepared to believe is just a
11 difference of opinion, and in my view, a clumsy and
12 foolish way to handle the matter on the part of the
13 White House staff and Mr. Nussbaum.

14 But they're starting to collect, and as
15 they're collecting too much, and the last one's quite
16 dramatic.

17 I mean, first of all, we had a sensible
18 system for reviewing the documents, and that's
19 changed to a system that doesn't have any law
20 enforcement input into it at all. It's changed
21 without notifying me.

22 I'm vaguely worried about the Park Police

1 feeling that they're not wholly able to investigate;
2 those messages are not too clear.

3 And then along comes a note that should
4 have been found on the 22nd, if they really went
5 through all the documents. I never looked at the
6 briefcase but it at least worries me that perhaps it
7 should have been found, and we learn about it 27
8 hours later.

9 So at this point, I felt we needed to do a
10 careful check on what the circumstances were with
11 regard to the finding of the note, just a complete
12 investigation, and anything that would have any
13 credibility would have to do that.

14 And so I direct the FBI be brought in and
15 interview everybody in the White House, everybody in
16 sight on the subject of the note.

17 And I issue a direction that I want this
18 to be a very aggressive investigation. I think the
19 term 800-pound gorilla is used.

20 Q By whom and to whom?

21 A It's between Margolis and me, describing
22 what the instructions should be to the FBI.

1 And they do go in to investigate the
2 finding of the note and the circumstances surrounding
3 that, and they interview 20 to 28 people over the
4 next days on that subject.

5 Q Did you give him a statutory predicate for
6 your investigation?

7 A I unprofessionally forgot that the FBI
8 needs a statutory predicate for investigation, and
9 this is part of a suicide, there is no Federal crime
10 of suicide, and I think it's that evening that I'm in
11 Mr. Margolis' office talking to him -- this would be
12 the evening of the 28th -- when Nancy McFadden from
13 the Associate's office comes in and says that the
14 White House is, that the people in the White House
15 are being threatened by the FBI with obstruction of
16 justice charges.

17 I think that all that's happened is that
18 they've been advised that this is an obstruction of
19 justice investigation, which is the nearest statute
20 that somebody in the FBI could come up with.

21 That's about it on that.

22 Q Well, let me back up a second.

1 When Ms. McFadden came in, am I correct
2 you were in a meeting with Mr. Margolis and several
3 other people?

4 A I think there were other people there. I
5 think Cindy Monaco was there. I don't know who else
6 was there.

7 Q It was not a meeting about Whitewater, I'm
8 sorry, not a meeting about the suicide?

9 A It would have been a short bull session.
10 There was, there seemed to frequently be conversation
11 going on in Mr. Margolis' office. I would have stuck
12 my head in and talked for ten minutes.

13 Q And she came in uninvited, Ms. McFadden?

14 A Nobody had to be invited. She simply came
15 to the door and I said, come on in, Nancy.

16 Q And what did she say?

17 A She told us that the people in the White
18 House -- she had been taking part in the campaign and
19 knew the people in the White House much better than,
20 for example, I did or anybody else in that room --
21 and she said they were very concerned, and I don't
22 know, I just don't know whether that means worried or

1 angry or what, by the fact that the FBI agents were
2 telling them that this is an obstruction of justice
3 investigation.

4 Q And did she ask anything?

5 A She plainly wanted me to do something
6 about that, if I could. I mean, I wasn't going to
7 call the FBI agents out.

8 In my own mind, I didn't believe that
9 there was an obstruction of justice going on. I was
10 agnostic altogether.

11 I simply thought that by now, we needed
12 the additional credibility of an investigation into
13 what had happened with regard to the note.

14 Q What did you say to Ms. McFadden, or what
15 did you say in her presence, after she came in and
16 made a statement?

17 A I don't remember what I said. All I
18 remember is, afterwards, Mr. Margolis gently
19 reprimanding me in a way that he did on two or three
20 occasions. He said, his way of reprimanding me was
21 he would come in and he would say, Phil, you know, I
22 admire you so much. I know that you always have

1 thought about what you do. I know that you never
2 just shoot from the hips, you always think about it,
3 but I can understand why you said what you said on
4 that occasion. Would you please explain it to me.

5 But I honestly don't remember what I said.
6 I mean, I think, to the best of my memory, I turned
7 to him and asked David, is this an obstruction of
8 justice? Does this have to be an obstruction of
9 justice investigation?

10 All I want to know is what happened to the
11 goddamned yellow note -- excuse the term -- and I
12 think it was at that point that he wanted to know,
13 had I thought through that.

14 Q Did he indicate to you, in this
15 conversation, after the occasion that Ms. McFadden
16 came in, that what he was wondering about is whether
17 you had thought about whether you wanted to have this
18 discussion in front of Ms. McFadden?

19 A Yes. Yes, that's exactly what it is.

20 He was suggesting that we were talking as
21 Justice Department people in his office and that
22 Nancy McFadden was there as a White House

1 representative and if we were going to talk about how
2 the investigation should be described to the White
3 House personnel by the FBI, I should not be doing
4 that in front of someone who was so closely connected
5 to the White House. That's exactly what he was
6 conveying.

7 Q Just to be clear on this, Ms. McFadden
8 actually was employed by the Department of Justice at
9 this point, right?

10 A Yes.

11 I learned six months later that she was
12 something called the Chief of Staff of the Department
13 of Justice.

14 Being only Deputy Attorney General, I was
15 not trusted with the information that we had a chief
16 of staff.

17 MR. LUSKIN: Let the record reflect that
18 you're being sarcastic here. People sometimes take
19 you literally.

20 THE WITNESS: May the record reflect that
21 I'm being sarcastic.

22 (Laughter.)

1 THE WITNESS: That I'm being sarcastic at
2 this point.

3 This is not a complaint about Nancy
4 McFadden. It is a complaint that if there was
5 something created by the White House called the Chief
6 of Staff in the Department of Justice, the Deputy
7 Attorney General should have been advised of the
8 existence of that position.

9 BY MR. CHERTOFF:

10 Q At any rate, as of July 1993, did you
11 understand she was attached in some capacity to
12 Webster Hubbell?

13 A Sure.

14 She was a senior deputy to Webster Hubbell
15 in much the same way that David Margolis was a senior
16 deputy to me.

17 Q But unlike Mr. Margolis, who was a career
18 employee of the Department who had, I guess, risen
19 through the ranks, for want of a better term, she had
20 been brought in from outside --

21 A She had been brought in because she had
22 been part of the campaign apparatus, which, as you

1 know, is common for most administrations.

2 You did remind me exactly how the
3 conversation went, Mr. Chertoff, and it went exactly
4 that way. And it was Mr. Margolis was saying to me,
5 this was a conversation about what we should do that
6 involved Justice Department people, and Nancy
7 McFadden -- did you forget -- in his super polite
8 way, he was asking, did you forget that Nancy
9 McFadden is really here representing the White House
10 as she talks to us about this.

11 Q Did you have any further conversations
12 with Ms. McFadden or anybody else about this incident
13 other than what you've described?

14 A Nothing that I remember. I could have
15 easily joked about it, but I don't remember that.

16 The title of the investigation was never
17 changed. It remained formally an OOI investigation
18 because it was the closest statute they could find.

19 Q And when you used the term earlier that
20 you were agnostic on the question, what did you mean
21 by that?

22 A I was, from the beginning, I was trying to

1 create a credible investigation. I was prepared to
2 use -- and one that protected the reputation of the
3 Department of Justice at the same time. I was
4 prepared to use the FBI, were it necessary, to build
5 the credibility of the investigation wherever there
6 was a weakness.

7 It wasn't that I affirmatively believed
8 that somebody was tampering with the evidence or that
9 the note had been found earlier.

10 The FBI comes to the opposite conclusion.
11 That the note was found exactly as it was described,
12 but there was a set of questions that were left open
13 by the White House handling that I felt had to be
14 closed if there was going to be any credibility to
15 the investigation.

16 Q Your last question (sic) impels me to jump
17 forward for a moment.

18 You say the FBI eventually found that the
19 note was discovered exactly as described. You're
20 talking about this initial investigation that was
21 conducted under your direction?

22 A Yes.

1 Q You're not indicating the results that you
2 received from any investigation by Independent
3 Counsel?

4 A No.

5 Q Did you ultimately review the FBI's report
6 or work product or get a summary of the evidence that
7 they had gathered?

8 A I believe I read it at the time, and I
9 read it yesterday.

10 Q And when you say, at the time, what was
11 the time?

12 A Early August 1993, I believe.

13 Q As of that time -- and I take it that
14 after the report was completed, you personally were
15 not involved in any further investigation about this?

16 A That's correct.

17 Q At the time then that you had that report,
18 did you have any knowledge, or had you heard from any
19 source, that a witness who was present in the room on
20 the 22nd with Mr. Nussbaum and the law enforcement
21 people, had overheard a conversation between Mr.
22 Sloan and Mr. Nussbaum concerning torn up pieces of

1 paper that one of them had seen in the bottom of the
2 briefcase?

3 A No. I've read that in the press.

4 Q That was not something that was part of
5 what was reported to you?

6 A No.

7 Q Now let me direct your attention back to
8 the week of July 26th, and now let's move to July
9 29th.

10 Did you have a meeting with Thomas Collier
11 on that day?

12 A Yes. Mr. Collier called up early in the
13 morning, maybe as early as 8:00 o'clock. He
14 identified himself as Secretary Babbitt's Chief of
15 Staff. He expressed, he seemed --

16 MR. CHERTOFF: Off the record.

17 (Discussion off the record.)

18 MR. CHERTOFF: Back on the record.

19 THE WITNESS: Mr. Collier sounded
20 distressed. I don't think I'd ever met him before.
21 He's a Washington lawyer.

22 He said he wanted to come over and see me

1 right away.

2 I told him to come on.

3 He arrived at about 8:30. He came into my
4 office, and the two of us met just by ourselves. I'm
5 about to describe his conversation.

6 When he was through, I sent him in to talk
7 to Margolis and Adams and tell them what he had told
8 me.

9 He said that they Park Police were -- he
10 wanted the Park Police to be pulled off the case. He
11 felt they were feeling that they couldn't manage an
12 investigation in the White House, that they couldn't
13 get the information and the witnesses and the
14 documents that they needed.

15 They had obviously heard about the note,
16 which must have been a source of embarrassment to
17 them. He said they felt like they were treated
18 unprofessionally by the White House staff.

19 He wanted the investigation turned over to
20 the FBI at once.

21 He said that he had called over to the
22 White House about the handling of the Park Police.

1 I should make clear the Park Police are
2 under the responsibility of the Department of
3 Interior, not Department of Justice.

4 And he felt that he had been treated
5 shabbily by the people to whom he'd talked, shabbily
6 may be too strong, but he hadn't been given an
7 adequate hearing by the people with whom he talked.

8 I told him that if there was a problem --
9 by now, I was getting fed up with this -- and that if
10 there was as problem with cooperation, I would take
11 care of it, and please don't pull the Park Police
12 out, and the FBI were already in doing their own
13 investigation.

14 I then took him over to meet with Mr.
15 Margolis and Mr. Adams, and I called David Gergen. I
16 called Gergen because he had some responsibility, he
17 had newly-announced responsibilities for trying to
18 make sense of the White House organization.

19 I also called him because I know him. He
20 and I had worked, had both been together on a
21 Visiting Committee at Duke School of Public Policy,
22 and I called him because he had come over shortly

1 before and met with the Attorney General and met to
2 see if he could be of help in any way on relations
3 between the Department of Justice and the White
4 House.

5 Q Was that visit spurred by this issue with
6 the documents?

7 A No. I think it was simply, that visit I
8 think was simply an introductory visit. He had never
9 met the Attorney General and he had just come on, and
10 I just went up with him to introduce him and stayed
11 with him because I knew him.

12 I called David Gergen, and I said to him
13 that I thought that the credibility of the
14 investigation had fallen to the place and the risks
15 with the Park Police wanting to be out of it, of
16 people believing that there was no fair and full and
17 adequate investigation were so severe that we had to
18 take action right away.

19 Mr. Collier had told me, had complained, I
20 believe, about their not being able to interview
21 White House individuals without the presence of White
22 House counsel, a perennial issue.

1 Q Was that the first you'd heard of that
2 issue?

3 A I'm not even positive that this is the
4 time when I first hear of it, but I had not heard of
5 it before to the best of my memory.

6 Mr. Gergen said, I'd like to call you back
7 at about 11:00, or have you call at about 11:00 -- I
8 don't know which way the call went -- and I'm going
9 to assemble all the people that are involved.

10 He called back. And at that point, it
11 seemed to me an awful -- he had, on his end of the
12 line on a speaker phone, half of the White House.
13 Maybe -- I can't name them all but there must have
14 been eight or nine or ten people there.

15 I read them the riot act in unmistakable
16 terms, telling them that this was a disaster very
17 near to occur, that I was sending, I had sent the FBI
18 in to interview on the note. That I wanted all
19 interviews to take place without White House counsel
20 there. That I wanted full cooperation. That there
21 was as very good chance that nothing could avoid sort
22 of a major failure of credibility and sense of biased

1 investigation, but that only the most vigorous of
2 steps, at this point, could do that, and I wanted a
3 complete turnaround.

4 I got a little bit of argument on the
5 other side, not much. It was on a speaker phone.
6 And the -- I hung up. It was very, very strong
7 conversation, a very strong message. And the
8 cooperation with the Park Police and with the FBI
9 turned around immediately and completely.

10 Q Did you -- in the course of this
11 conversation, you indicate you raised the issue about
12 not having White House counsel present during the
13 interviews.

14 A Yes.

15 Q I take it you didn't forbid people to have
16 their own attorneys present?

17 A No. It was perfectly all right to have
18 their own attorneys. We've always, for a long time,
19 and I've been around a long time, had the problem
20 with Senate Committees and with the White House,
21 going back to Watergate and Senate Committees back to
22 the Carter days, the institution always likes to have

130

1 its house counsel present, as do corporations, and
2 the investigators always feel that that is likely to
3 undermine the credibility of the investigation and
4 the frankness with which people talk.

5 Q Were you particularly concerned in this
6 situation because you knew that some of the members
7 of the White House Counsel's Office were themselves
8 likely to be witnesses with respect to this inquiry
9 in terms of finding the note?

10 A I don't think so, Mr. Chertoff. I think I
11 just knew that this was going to debate for a long
12 time and this was no time, I wasn't going to -- this
13 was, I wasn't going to go through another argument
14 where the White House was going to insist on cutting
15 things a little bit its way.

16 Having cut things a little bit its way
17 five times in a row, we were about to have the
18 hearings at which I'm about to testify.

19 (Laughter.)

20 Q That's true.

21 What was the reason that you initiated
22 what you've described as an aggressive or very

1 aggressive investigation at this point, regarding the
2 issue of the note?

3 MR. LUSKIN: Hasn't he just described that
4 for you?

5 BY MR. CHERTOFF:

6 Q Well, I want to see if I can get just a
7 clear statement of what your reason or reasons were?

8 MR. LUSKIN: I thought he gave a clear
9 statement.

10 THE WITNESS: I'll give much the same
11 statement, Mr. Chertoff, but I don't mind.

12 The note just, if you wanted to have a
13 public sense of confidence in the events surrounding
14 what, after all, was simply it turns out a suicide,
15 we were piling up too many things that would cause
16 the public to have concerns and would raise questions
17 over time.

18 And this one was a note that was found
19 four days after the office had been searched in a
20 search that was carried out in a way that did not
21 involve law enforcement, and the note that was found
22 and purported to be a suicide note, I now know that

132

1 it came from a few days before his death, was held
2 for an unusually long period of time before it was
3 turned over.

4 And having said all those things in one
5 sentence, it didn't amount, in my mind, to a belief
6 that people were making up evidence or destroying
7 evidence or tearing up evidence or something like
8 that, but to create the credibility that I
9 desperately wanted for the Justice Department, for
10 the FBI, for the Park Police, for the United States
11 Government, I thought that I had to get to the bottom
12 of what happened to the note in a deeper way than
13 simply accepting the explanation of the White House
14 counsel.

15 Q I guess my question is this.

16 Was it a question of establishing, simply
17 a question of establishing credibility and
18 appearances, proper appearances, or from your
19 consideration of these individual instances, not one
20 by one, but collectively, did you, at this point,
21 believe that the collective circumstances themselves
22 were sufficiently unusual, and even let's say

1 suspicious to warrant an investigation in their own
2 right?

3 A I wanted to take steps that would go far
4 beyond what would warrant an explanation in, what
5 would warrant an investigation in its own right, Mr.
6 Chertoff.

7 A good way to think of it is in terms of
8 the Independent Counsel. When you have the White
9 House, you trigger an Independent Counsel at a very,
10 very early stage, long before there's any decision.

11 You certainly trigger a process in the
12 Justice Department at such an early stage that you
13 don't even know whether you want to have an
14 investigation.

15 Well, we were dealing with the White House
16 here, and I simply wanted something much -- I wanted
17 a much higher level of credibility than your -- I
18 mean, to want to open an investigation because you're
19 suspicious, you have to have a fair amount of
20 suspicion. I would have triggered this and did
21 trigger it with far less suspicion than that.

22 Q After you had this conversation with the

1 White House people, did you have any further
2 discussions with anybody concerning the progress of
3 this investigation until the results were made
4 available to you?

5 A The only discussion I remember is a very
6 careful call from David Gergen, asking whether we
7 could give them 24 hours' notice, I believe -- I
8 don't think even seeing the documents -- but 24 hours
9 notice before we announced the results of the
10 investigation.

11 And being very -- in one of these
12 conversations said, if you think there's anything
13 improper about this, please let me know and don't do
14 it. And I told him we would give him 24 hours'
15 notice before we released the results, just so that
16 they could be ready to comment on it.

17 Q Was someone at the Department of Justice,
18 I don't mean the FBI, I mean the Department, the
19 lawyers, assigned to be the liaison or to work with
20 the investigation?

21 A Which investigation, Mr. Chertoff?

22 Q The one you had ordered with respect to

1 the discovering the note?

2 A I don't think so.

3 Q Just the FBI did it themselves?

4 A Yes.

5 The relationship between Mr. Margolis and
6 the FBI is a very warm, cordial, close and trusting
7 one. I would imagine that he might very well have
8 been in almost daily contact with them, or if he told
9 me he wasn't, I could believe that too, but he might
10 have been in regular contact with them.

11 Q In any case, you didn't ask him to report
12 to you on a regular basis?

13 A No.

14 Q And ultimately the results were presented
15 to you in a report?

16 A Correct.

17 Q Is that the last action you took or
18 involvement you had regarding any investigation into
19 the handling of the documents at Mr. Foster's office,
20 other than testifying in the case, I mean, in your
21 capacity as Deputy Attorney General?

22 A On the day that the reports were made

1 public, I directed that the Office of Professional
2 Responsibility investigate one of the lines in the
3 Vince Foster note, and that the public corruption,
4 public integrity unit in the Criminal Division
5 investigate a couple others.

6 I think that's the last I had to do with
7 it at all.

8 MR. LUSKIN: Apart from the meeting in
9 February of 1994 that we talked about.

10 MR. CHERTOFF: Okay.

11 MR. LUSKIN: I just wanted to make sure
12 that we had an incomplete answer there.

13 MR. CHERTOFF: I was about to get to
14 February.

15 BY MR. CHERTOFF:

16 Q Before I get to February in which my
17 understanding you worked essentially to assemble
18 records and kind of compile them.

19 But putting that aside, what you've
20 described as the last act you took as Deputy Attorney
21 General in connection with investigating this subject
22 matter?

1 A I believe that's correct.

2 There's from Freedom of Information
3 questions I didn't, I hardly dealt with.

4 Q At the time that the investigation was
5 completed, you indicated you didn't have any
6 knowledge concerning any evidence that the pieces of
7 paper may have been seen in the briefcase as of the
8 22nd.

9 Let me ask you whether, as of the time you
10 completed the investigation, you had any knowledge
11 that any documents had been removed from Mr. Foster's
12 office after Mr. Margolis and Mr. Adams had left on
13 the 22nd, and been taken up to the residence?

14 A I think I first heard of that months
15 later.

16 Q From the press?

17 A From the press I believe, Mr. Chertoff.

18 Q Did you hear about it in your official
19 capacity at the Department?

20 A I don't think so.

21 Q Now let me move forward to February of
22 1994, and directing your attention to PH-1, I believe

1 you previously testified that these notes were
2 prepared around that point in time.

3 Was this, were these notes prepared after
4 you had announced your resignation but before your
5 resignation from the Department became effective?

6 A Yes, during that two week period.

7 Q And would you tell us why you prepared
8 them?

9 A At that time, I took a number of steps
10 that had to do with material or information that I
11 would need after I left the Department. I knew I was
12 going to speak out immediately in opposition to the
13 Crime Bill, and I met with a number of people on
14 different aspects of the Crime Bill, discussing them,
15 and getting -- and pulling together a sort of
16 historic record of the workings on the Crime Bill.

17 I had of course to decide exactly what
18 files I was allowed to keep and wasn't allowed to
19 keep.

20 And I believe the newspapers at the time
21 were talking about rumors about the Vince Foster
22 investigation, and was it really a suicide or wasn't

1 it really a suicide.

2 We had of course just appointed the
3 Independent Counsel, Bob Fiske, very shortly before,
4 and he was going to look into this.

5 So I wanted to, among the other things I
6 was pulling together in terms of information before I
7 left, easier to get before I leave than after I
8 leave, was my record, Roger Adam's record, David
9 Margolis' records, and whatever file records there
10 were, of what had happened with regard to the Vince
11 Foster suicide.

12 And this is the result of it.

13 I had a meeting, my secretary came with
14 any records that were in the deputies file. Cindy
15 Monaco came with whatever she had. Roger Adams and
16 David Margolis came, and we just walked through the
17 seven, eight or nine days.

18 These notes are my description of that
19 conversation.

20 Q And what was the reason you particularly
21 wanted to keep a record of that?

22 A I thought that I would find myself

1 testifying.

2 (Laughter.)

3 I also thought the Independent Counsel
4 would want to hear from us, and this is my sixth
5 interview on the subject.

6 (Handing document to witness.)

7 BY MR. CHERTOFF:

8 Q I'm going to finally direct your attention
9 to what's been previously treated as a redacted --
10 I'm sorry, as a Bates number F-143. It's a partly
11 redacted document produced by the Department of
12 Justice.

13 It's a copy, a hard copy of an E-mail
14 entitled "Vince Foster Moot Court Media Questions,"
15 and I'd like to clear up something that's not a
16 misapprehension, I think, to those who have read it,
17 but may be a misapprehension to those it's been
18 described to probably incompletely.

19 Would you identify what this document is
20 and how it was generated?

21 A "Why didn't you put your cigar store
22 Indians back to work at the office?"

1 (Pause.)

2 Q You're reading aloud to yourself a portion
3 of the note.

4 (Laughter.)

5 Is that correct?

6 A Yes, that's correct.

7 MR. BEN-VENISTE: I know he's reading, his
8 lips are moving.

9 BY MR. CHERTOFF:

10 Q Having reviewed 143, can you tell us what
11 it is?

12 A It is an effort to produce the most
13 hostile press questions that Mr. Margolis could
14 imagine arising out of the Vince Foster matter.

15 Now I only vaguely remember the document,
16 Mr. Chertoff. I remember being somewhat appalled
17 when I first saw it, let alone the time when I read
18 it in the New York Times.

19 It was probably prepared in preparation
20 for the news briefing that accompanied the
21 announcement of the results of the Park Police and
22 FBI investigation.

1 Q And your understanding was that
2 essentially Mr. Margolis was maybe even somewhat
3 sarcastically assembling a series of potential
4 hypothetical press questions, and you could prepare
5 yourself for what might in fact be thrown at you at
6 that press conference?

7 A Yes. These were not questions that he was
8 suggesting to me, these were not his comments. These
9 were the questions that he wanted me to be prepared
10 to answer if asked from, by the most unfair, hostile
11 of questioners.

12 Q On the other hand, putting aside, you
13 know, some of the references to cigar store Indians,
14 I take it that the issues that he was presenting,
15 perhaps in extreme form, as potential questions, you
16 took seriously as questions that might be raised by
17 serious observers about what had occurred previously.

18 MR. BEN-VENISTE: I think that's an
19 example of where a leading question is really
20 pernicious. Why not just ask were there issues that
21 are reflected here?

22 BY MR. CHERTOFF:

1 Q Well, let me ask you, I mean, I don't want
2 to get Mr. Ben-Veniste upset, so I'll ask it this
3 way.

4 Putting aside the hyperbolic references to
5 various individuals, what was your reaction to the
6 core issues that Mr. Margolis suggested might come in
7 the press conference regarding the delays in finding
8 the notes, and you know, why it is that various
9 things didn't occur?

10 What was your reaction to the kind of
11 underlying sensibility of this?

12 A It doesn't, it isn't helpful, it wasn't
13 helpful to me in a way that I would have liked it to
14 be helpful. I don't like being critical of Mr.
15 Margolis ever, but what I needed was the hardest
16 questions, not the most hostile questions.

17 Many of these questions are very angry,
18 skeptical, unbelieving, cynical questions which I
19 could answer very easily, so I didn't need his help
20 in identifying those questions.

21 The questions I need help with are what
22 are the most difficult questions to answer, and that

1 was not a list of the most difficult questions to
2 answer, that was a list of often times the stupidest
3 questions asked by the angriest people.

4 MR. LUSKIN: For clarification, and it
5 might be helpful here, it would be helpful to know
6 whether he understood or intended these questions to
7 be questions that, based on Mr. Margolis' personal
8 knowledge and participation, he thought deserved to
9 be addressed, or whether they were questions that
10 were, in effect, questions he supposed someone else
11 might ask on the basis of information that was in the
12 public view.

13 I think the concern about the document is
14 somehow that this is -- these are questions that Mr.
15 Margolis might be raising based upon his knowledge
16 and participation in these events, as opposed to
17 questions that might come out of the mouths of
18 someone who had no, did not have the benefit of this
19 information.

20 THE WITNESS: It plainly, they were
21 intended to be questions, intended by Mr. Margolis to
22 be questions raised by someone who had no knowledge

1 of the underlying events.

2 BY MR. CHERTOFF:

3 Q What did you think were the most difficult
4 questions going into this press conference?

5 A I ended up, Mr. Chertoff, simply
6 introducing the FBI and the Park Police and referring
7 all questions to them.

8 Q That's not really an answer, through.

9 A Which, well, it meant that I didn't have
10 to prepare the most difficult questions.

11 I mean, I would have -- the thing, I think
12 you've gone, I think we can safely assume that you've
13 asked all the most difficult questions.

14 Q Finally, let me ask you --

15 MR. BEN-VENISTE: None of them stupid or
16 angry, skeptical, hostile or cynical.

17 (Laughter.)

18 BY MR. CHERTOFF:

19 Q Finally, let me direct your attention to
20 the last line of this E-mail, which it comes after a
21 period, portion that says "redacted, non-responsive."

22 And this is, for the record, the E-mail is

1 captioned with a date of Saturday, August 7th, 1993.

2 It says: "Talk to me about my
3 conversation with Jim Hamilton on Friday night."

4 Did you ever talked to Mr. Margolis about
5 that?

6 A We had different conversations about Jim
7 Hamilton. I don't have any idea what this one would
8 be, Mr. Chertoff.

9 Incidentally, I didn't have a computer in
10 my office, so that E-mail could not have gone to me.
11 He could have printed it up and handed it to me, but
12 I didn't have a computer.

13 Q You didn't have it on your screen, so to
14 speak?

15 A I didn't have a screen in my office.

16 MR. CHERTOFF: Okay, nothing further.

17 MR. BEN-VENISTE: Off the record.

18 (Discussion off the record.)

19 EXAMINATION

20 BY MR. BEN-VENISTE:

21 Q Mr. Heymann, as you know, my name is
22 Richard Ben-Veniste, and I am the special counsel to

1 the minority on this Committee, and I may ask
2 questions from a slightly different perspective than
3 Mr. Chertoff, and I hope I won't be unnecessarily
4 redundant or duplicative.

5 Let me start with what Mr. Chertoff
6 covered last, and that is what has appeared in The
7 New York Times as of this date in some form as
8 characterized by the reporter in this way, and I'll
9 quote from a story in The New York Times of
10 July 21st, 1995.

11 "A few weeks after Mr. Foster's death,
12 David Margolis, a senior Justice lawyer involved in
13 the Foster investigation, complained in an E-mail
14 message to Mr. Heymann about how the White House had
15 improperly tainted the investigation with political
16 considerations, and compared the climate at the
17 Department to when it was run by the Reagan
18 Administration."

19 Now is that, Mr. Heymann, in any way,
20 shape, or form, a remotely accurate characterization
21 of Mr. Margolis' E-mail?

22 A No.

1 Q Have you any idea who may have provided
2 such information to The New York Times in this
3 regard?

4 A I've no knowledge on the subject at all,
5 Mr. Ben-Veniste.

6 Q Do you regard this as unfair to Mr.
7 Margolis and the others who were involved in this
8 investigation, that Mr. Margolis' memorandum be
9 characterized in the way it was?

10 A Yes.

11 Have you read the E-mail? I also think
12 it's fairly clear that the E-mail was not subject to
13 that characterization.

14 Q You can tell on the very face of Mr.
15 Margolis' E-mail that it could not possibly have
16 represented Mr. Margolis' view of any legitimate
17 questions that could be raised?

18 A And the tone would be beyond what was
19 tolerable even by the most general, generous, kindly
20 and difficult to anger of bosses: me.

21 MR. LUSKIN: If it had been intended
22 serious.

1 THE WITNESS: If it had been intended
2 seriously.

3 BY MR. BEN-VENISTE:

4 Q And with respect to the fourth paragraph
5 of that E-mail, the fourth numbered paragraph, I take
6 it that paragraph alone demonstrates the --

7 A I don't have it in front of me, Mr. Ben-
8 Veniste.

9 (Handing document to witness.)

10 BY MR. BEN-VENISTE:

11 Q I take it that that paragraph alone
12 demonstrates how far from the mark of reality those
13 questions were intended to be?

14 A Yes. There were, at that time, all sorts
15 of wild, often vicious rumors without any
16 substantiation of every sort involving Vince Foster's
17 suicide.

18 And what he was doing there was simply
19 calling up one of them to say, be prepared to answer
20 every type of vicious rumor; spies, everything.

21 Q All right, we're not going to take the
22 time of this deposition to go into each and every

150

1 crackpot conspiracy theory or speculation that has
2 been voiced in the two years between Mr. Foster's
3 suicide and today.

4 With respect to your evaluation of Mr.
5 Nussbaum's treatment of the problem, and you've
6 recognized that there's always a difficulty in
7 balancing the interests of legitimate law enforcement
8 inquiry as against the interests of privilege of
9 various natures and precedent in dealing with White
10 House documents, is that so?

11 A Yes.

12 Q And in evaluating how to go about tackling
13 the problem, you came to this problem with a great
14 deal more public service experience than Mr. Nussbaum
15 had possessed at that time, is that so?

16 A That's correct.

17 Q And in your view, if I understand your
18 testimony, Mr. Heymann, you looked out not at where
19 the bouncing ball was at the moment, but where the
20 bouncing ball might land according to your years of
21 experience?

22 A I certainly anticipated that we might be

1 in exactly the situation we are now with hearings
2 going on over a suicide.

3 Q Because you had seen, in your experience,
4 how seemingly innocuous facts under the very best of
5 circumstances can be rewoven into horrible conspiracy
6 theories with all sorts of nefarious motives
7 attributed to the people involved?

8 A That certainly often happens.

9 Q Now what you wanted to do, and the advice
10 that you were giving Mr. Nussbaum, as you discussed
11 the procedures to be employed, was to avoid the
12 possibility that at some point in the future, any
13 reasonable person could offer criticism that the
14 decisions were being made by interested parties, and
15 that they were taken in a manner that would only
16 continue to raise, rather than allay suspicion?

17 A Yes.

18 Q Mr. Nussbaum apparently adopted a position
19 that was far more legalistic in its approach.

20 MR. CHERTOFF: I have to object to that
21 because that's asking the witness to validate
22 speculation over what went on in someone else's mind

1 unless you want to put in terms of something that was
2 said.

3 MR. BEN-VENISTE: Now you don't like this?

4 MR. CHERTOFF: Well, I was trying to abide
5 by your rules, Mr. Ben-Veniste.

6 MR. BEN-VENISTE: Well, if we could all
7 start with the same rules at the same time, then we
8 could have an agreement on it.

9 MR. CHERTOFF: I'm not going to instruct
10 him not to answer, so if you want him to answer, I
11 mean, he's free to do so.

12 MR. BEN-VENISTE: It would be interesting
13 as to what such an instruction would accomplish in
14 this context, but we're at almost the very last of
15 the depositions in this phase so I won't engage you
16 in that.

17 Could you read back the question?

18 (Readback.)

19 MR. BEN-VENISTE: Let's go ahead. I'll
20 rephrase the question.

21 BY MR. BEN-VENISTE:

22 Q Was it your view that ultimately Mr.

1 Nussbaum relied upon a more legalistic interpretation
2 of what his rights were as White House counsel in
3 protecting the various privileges involved, rather
4 than a more practical and accommodating decision that
5 might be based on your concern that future criticism
6 of his decisions could be levied?

7 MR. LUSKIN: Jim, let me clarify, are you
8 asking whether or not in real time he understood what
9 the basis for Mr. Nussbaum's position was, or whether
10 or not that would be the justification for it now,
11 understanding everything?

12 BY MR. BEN-VENISTE:

13 Q Right. Whether you now come to that
14 conclusion?

15 A I don't think it's useful for me to guess
16 at the motivations of anybody in the White House.

17 Q Let me put it a different way, let me put
18 it a different way.

19 Is it correct that the Department of
20 Justice, on July 21st, 1993, had no right to either
21 enter Mr. Foster's office and review the materials
22 contained therein, nor did the Park Police?

1 A I believe, without complete certainty,
2 that that is correct, Mr. Ben-Veniste. I don't think
3 we had probable cause to search. We certainly didn't
4 have a grand jury. It was an earlier stage than one
5 would generally have a grand jury.

6 I have a little bit of a question as to
7 whether a grand jury would be appropriate when you
8 don't really suspect a crime and you believe it's a
9 suicide.

10 And if it were appropriate and we did have
11 a grand jury and we did issue a subpoena, we would
12 not have satisfied the standards of U.S. v. Nixon at
13 that point for getting past Executive privilege.

14 Q So what you were trying to fashion was a
15 procedure that wasn't based on legal rights but was
16 more based on experience and common sense?

17 A And a recognition that the people -- Yes.
18 But also a recognition that the people who were going
19 to have access to the documents would be officials of
20 the Department of Justice.

21 Q Of course.

22 A It wasn't like this was an outside body to

1 whom there might be more reason to assert Executive
2 privilege.

3 Q Now before you dispatched Mr. Margolis and
4 Mr. Adams to the White House on the 21st, did you
5 receive any input from the Park Police as to what it
6 was that they were actually looking for?

7 A I just don't -- I don't think so but I
8 don't remember, Mr. Ben-Veniste.

9 Q Did you feel that Mr. Margolis and Mr.
10 Adams would ascertain that information in short order
11 when they met with the Park Police?

12 A Yes. But I think that I had the
13 impression then, and have the impression now, that
14 the Park Police were simply looking for whatever one
15 looks for in the event of a suicide.

16 Q So again getting back to the question of
17 what do you do in a normal situation --

18 A Of an apparent suicide.

19 Q -- of an apparent suicide.

20 Now, did you know at the time that,
21 according to the Park Police experience, as was later
22 codified in their investigative manual, that the

1 normal way to investigate a work place in an apparent
2 suicide investigation, where the suicide does not
3 take place at the site of the work place, is to
4 secure the assistance of the employer and the
5 coworkers and to try to get their cooperation in
6 providing information?

7 A I knew nothing about their standard
8 procedures there.

9 Q Now the standard procedures of
10 investigative agencies can often be affected when the
11 White House is involved or a high level government
12 official from any agency, for that matter, in your
13 experience. Is that so?

14 A Yes, particularly the White House.

15 Q Now let me confirm, for this record, that
16 with respect to your telephone conversation with
17 Bernie Nussbaum on the 21st, that you never
18 understood that there was a promise or a commitment
19 to engage in the procedure that you had described,
20 that is, for Mr. Margolis and Mr. Adams to look at
21 the first part of any document and so forth, but that
22 this was an understanding of an acceptable way, in

1 your view, to approach a difficult problem?

2 A It was less than a promise, because you
3 don't generally get promises when you're dealing with
4 other officials unless you think, except in
5 exceptional circumstances, but it was more than an
6 understanding on my part, we discussed how should
7 this be handled.

8 I think it was me who proposed the way
9 I've described, but whoever it was, we both agreed
10 that that was the way to go. I simply didn't feel
11 that there would be any impropriety in his calling
12 back four hours later and saying, you know, I've been
13 thinking about it and I think that was a mistake, and
14 we shouldn't do that. He wasn't committed for life
15 of a contract.

16 Q This is essentially what happened the
17 following day?

18 A It isn't what happened the following day
19 because the following day, he said I want to do it
20 differently.

21 I said, then I don't want the Justice
22 Department people to participate. I think it's a

1 terrible mistake.

2 He said, we can resolve what happens with
3 the Justice Department people later, when I call you
4 back, and then he never called me back.

5 Q No, you misunderstand the premise of that
6 question.

7 A Oh? I'm sorry.

8 Q It was the change in direction that I said
9 that I was meaning to convey was what happened the
10 next day.

11 That is, he in fact said, well, this is
12 the way I'd like to do it instead.

13 A That's correct.

14 Q Now what got you upset, as far as I can
15 see, in the first of a series of upsets, but the
16 preliminary upsetting information was that there was
17 apparently a miscommunication in connection with
18 whether the Department of Justice attorneys under
19 your supervision were to stay at the White House
20 under the circumstances that eventuated, that is,
21 under circumstances where Mr. Nussbaum held to the
22 position he had announced on the 22nd?

1 Correct?

2 A I'd be inclined to say that there was more
3 to it than that, Mr. Ben-Veniste. I felt that the
4 Justice Department and law enforcement should have as
5 much to say about how this should be handled as the
6 White House Counsel's Office.

7 And I felt that the Justice Department
8 view was simply overridden without conversation.

9 Now the symbolism of that was to not give
10 me an opportunity to review the Justice Department
11 attorneys. But it wasn't just, I could explain the
12 next day that they were simply there, you know, that
13 they had done nothing, and that would eliminate the
14 confusion about it, but the Justice Department's own
15 reputation is also at stake and also is law
16 enforcement's.

17 Q But I'm talking about in terms of the
18 implications of that, I think we'll get to, and I
19 want to give you a full opportunity to expound on
20 that.

21 But in terms of the communication, if I
22 understand what you've testified to this morning, Mr.

160

1 Margolis was under the impression that he had the
2 authorization to stay at the White House and go
3 through the exercise, even under circumstances
4 modified by Mr. Nussbaum?

5 A That's correct.

6 Q Whereas you felt that you were owed a call
7 back by Mr. Nussbaum and that the Justice Department
8 lawyers should not have stayed without your prior --

9 Strike that whole question.

10 Whereas it was your view that if Mr.
11 Nussbaum continued to adhere to the procedure that he
12 had announced on the morning of the 22nd, that you at
13 least ought to have the ability to decide whether or
14 not to remove the Justice Department component from
15 the assembled group?

16 A Yes.

17 MR. LUSKIN: I want to be clear, because I
18 think there's a risk here of sort of conflating (sic)
19 two separate conversations. One is whatever
20 conversation Mr. Heymann may have had with Mr.
21 Margolis that led Mr. Margolis to have his
22 understanding of what his authority was.

1 And an entirely separate conversation that
2 Mr. Heymann had with Mr. Nussbaum that led Mr.
3 Heymann to believe that he was expected a phone call
4 back.

5 MR. BEN-VENISTE: I understand that.

6 MR. LUSKIN: I didn't want to conflate
7 those two.

8 BY MR. BEN-VENISTE:

9 Q The miscommunication in your mind was as
10 between you and Mr. Margolis, not you and Mr.
11 Nussbaum?

12 A That's right.

13 Q So that when Messrs. Nussbaum and Adams
14 returned to the Department of Justice later that
15 afternoon --

16 MR. LUSKIN: Margolis.

17 BY MR. CHERTOFF:

18 Q Margolis and Adams returned to the White
19 House --

20 Strike the question.

21 So that when Messrs. Margolis and Adams
22 returned to the Department of Justice from the White

1 House later that afternoon and explained to you what
2 had occurred, you were upset because you had not had
3 the opportunity to discuss the continuation of the
4 procedure with Mr. Nussbaum before it occurred?

5 A Yes.

6 Q And?

7 A And because I wasn't happy with two
8 Justice Department attorneys and FBI agents sitting
9 at one end of the room, unable to see, told to stay
10 there while somebody else did a review of files.

11 Q Now, in your view, it was within Mr.
12 Nussbaum's prerogative in terms of rights and
13 privileges, to conduct the search for the note or
14 related material in the way that he had gone about
15 it, but what was improper was the suggestion that the
16 Department of Justice was playing a role in this
17 procedure?

18 A I do not, I'd like to answer your
19 question, Mr. Ben-Veniste, by taking it in parts. I
20 could answer it almost yes or no, but --.

21 I did not think that we had a handy legal
22 option of using a subpoena or a search. In that

1 sense, a court would not intervene to say to the
2 President or to the White House, give those documents
3 to the Park Police.

4 I haven't done a lot of research on it,
5 but that was my belief at the time and it's still my
6 belief.

7 I did indeed resent the use that was being
8 made of the Justice Department on that occasion.
9 That's also true.

10 I think that a situation like this wasn't
11 within the ambit of the President's counsel to
12 resolve by himself. I would have thought that the
13 claims of law enforcement and the claims of
14 Presidential privilege would have to be, if they were
15 really in conflict, would have required more
16 discussion, perhaps taking it to a higher level,
17 something like that.

18 And all of that was preempted and bypassed
19 just by failing to notify me of what was being done.

20 Q All right. So as they got back on the
21 evening, they made their report to you on the 22nd.

22 A Yes.

1 Q You were upset and you spoke to Bernie
2 Nussbaum on the evening of the 22nd, and you
3 expressed your unhappiness candidly to Mr. Nussbaum
4 at that time.

5 A And he did not say, on that occasion, oh,
6 I had a quite different understanding of our
7 conversation this morning.

8 Q He simply said, this was my decision, I'm
9 sorry --

10 A But I did it.

11 Q -- if you don't agree, I'm sorry if I
12 didn't call you back when you were expecting a call
13 back.

14 A Something like that.

15 Q Now, at that point, did you or Mr.
16 Margolis or Mr. Adams discuss whether you should take
17 any additional step, that is, should you do something
18 about reviewing those documents?

19 Should you call someone at a level above
20 Mr. Nussbaum to get these documents reviewed by the
21 Justice Department or some other non-White House
22 Counsel's Office authority?

1 A No.

2 We certainly didn't do anything like that.

3 I don't remember a discussion.

4 Q And did Mr. Margolis report to you that
5 documents had been identified and segregated for
6 review by White House counsel with the understanding
7 that after that review, that if there were no
8 privileges or other problems asserted, that the
9 police would have the opportunity to review those
10 materials?

11 A I don't remember any such conversation.

12 I'm a little bit -- I can't --

13 Q Well, if it would help you recollect, this
14 would be in the same context as the discussion about
15 the materials that went to the Foster family
16 attorneys, which may have been, among which may have
17 been materials designated by the police for their
18 review?

19 A I think that's right. There was a
20 separate segregation of documents that would be made
21 available.

22 Q Okay.

1 Now, at any point, did you hear that the
2 materials which were identified by the Park Police
3 that they wished to review were not made available?

4 A I don't remember any discussions of that
5 sort at all.

6 Q Did ultimately after your conversation
7 with Mr. Collier and Mr. Gergen, the Chief of the
8 Park Police report back to you, either directly or
9 indirectly, that the problems had been resolved with
10 respect to the White House cooperation in their
11 investigative efforts?

12 A I did hear that from the Park Police
13 Interior side, I can't remember from whom, in the
14 days after my conversation with Mr. Gergen and the
15 others.

16 Q Either from Mr. Collier or Chief Langston?

17 A Or it could be one of them or it could be
18 Mr. -- you know, Captain Hume, but I did hear -- it
19 was probably Collier -- that things were resolved and
20 worked fine thereafter.

21 Q And to summarize that sort of confluence
22 of conversations involving Messrs. Gergen and Collier

1 and perhaps others in the Administration, was it your
2 view that there were people in the Administration who
3 shared your view that perhaps Mr. Nussbaum was over-
4 managing the situation, and that a more thoughtful
5 and longer-term approach should be made?

6 A I'm just reading other people's minds at
7 that point, but I think the answer is, yes. I think
8 that for some people in the White House, I was being
9 used as a way of turning around the handling.

10 Q And so after those series of
11 conversations, to bring closure on this point, it was
12 communicated to you by the people who were
13 supervising the police investigation that the White
14 House had turned a significant enough corner in their
15 dealings with the police as to eliminate what
16 problems may have existed?

17 A I don't have any idea whether it
18 eliminated whatever difficulties there were in the
19 search of the documents in the first place. They
20 were getting the cooperation after July 27th that
21 they wanted, was my understanding.

22 MR. LUSKIN: 29th.

1 THE WITNESS: 29th. Yes, after the 29th,
2 they were getting the cooperation that they wanted.

3 BY MR. BEN-VENISTE:

4 Q And after the note, the torn up note had
5 been discovered, is it fair to say there was a
6 tremendous amount of press criticism leveled against
7 the Park Police which you and others felt was unfair
8 under the circumstances that had preceded that
9 criticism?

10 A I don't remember the press well enough to
11 remember whether it was addressed to the Park Police
12 or to the White House or to what. I simply just
13 can't remember at that point.

14 I know the Park Police felt very
15 embarrassed by the finding of the note, as if they
16 had overlooked it.

17 Q Can this, in your mind, added to the
18 problems that you had identified already in terms of
19 how the White House was proceeding, ignoring the
20 longer-term effects or possible effects of their
21 actions, as you had initially perceived them, and
22 culminated in the discovery of the note which well

1 could have been discovered several days earlier?

2 A Yes. The term, longer-term effects, it
3 really is the broad public sense that what is being
4 done is non-partisan and effective and fair, and that
5 has long-term effects but it also comes out
6 immediately in the form of attacks on the Hill and in
7 newspapers.

8 Q Are you aware of any document that was
9 requested by the police which was withheld on the
10 ground of Executive privilege or attorney-client
11 privilege?

12 A I don't remember what specific documents
13 were requested by the Park Police.

14 This came up in one of your questions a
15 little bit earlier, Mr. Ben-Veniste.

16 I just don't remember what documents they
17 requested.

18 Q Well, let me ask just on the basis of your
19 present knowledge that's assisted by your notes made
20 some months later of your recollection as to whether
21 you have any memory of any materials which were
22 requested by the Park Police but which were held back

170

1 or resisted in their production on a claim of
2 Executive privilege?

3 A I don't think so. I don't have anything
4 in mind there.

5 Q Now, if you will go back again to what
6 your understanding of Mr. Margolis' --

7 A Mr. Ben-Veniste, it's clear that Executive
8 privilege is, as I understood it from Mr. Margolis
9 and Mr. Adams, being asserted in a fairly casual way
10 as the documents were reviewed on Thursday, the 22nd.
11 But nobody knows what documents it is that Executive
12 privilege is being asserted as to.

13 In other words, the White House Counsel's
14 Office is looking at documents, as I understand it,
15 in Mr. Foster's office and saying, well, this
16 document has Executive privilege, this document has
17 Executive privilege, and they are being set aside,
18 but nobody knows which documents it is as to which
19 Executive privilege is being asserted on those
20 occasions.

21 Q You're not suggesting that there was no
22 description of the subject matter?

1 A Only the most passing of descriptions, as
2 I understand it.

3 Q But in terms of the contemporaneous
4 request by the police for things such as real estate
5 investments, health care, the files for Supreme Court
6 appointments and so forth?

7 A I have no reason to believe that the Park
8 Police ever wanted anything like that. And neither I
9 nor they would have been aware of the existence of
10 Whitewater at that time.

11 Q Now you've anticipated my next
12 question.

13 A Why don't you ask your next question.

14 Q Do you think they would have been
15 interested, at the time, in any particular real
16 estate investment or tax-related file, either
17 regarding prior tax filing of the President and
18 Mrs. Clinton personally, or any anticipated tax
19 filing?

20 A I am being speculative but I think they
21 would not have been interested.

22 I think they would have only been

1 interested in matters that more directly involved
2 Vince Foster, his own, his job, his health, his
3 family, things like that.

4 Q So that -- I'm not going to ask you to
5 speculate.

6 With respect to -- your understanding of
7 Mr. Margolis' impression of his authority as he went
8 to the White House on the 22nd, you have indicated
9 that it was Mr. Margolis' impression, when he left
10 for the White House that morning, that he was
11 authorized to stay at the White House and sit
12 through the search or procedure, even if it
13 differed from what you regarded as the appropriate
14 compromise of privilege as against law enforcement
15 interests?

16 A His understanding?

17 Q Yes, as you are given to understand
18 it.

19 A This is second or third hand, but that is
20 my understanding as to what he believed.

21 MR. LUSKIN: That's not based on a
22 conversation with Mr. Margolis, is it?

1 THE WITNESS: It initiates with the
2 Independent Counsel saying Mr. Margolis believes
3 this, do you have the same belief, and I said, no.
4 And since then, I'm sure that I've mentioned it to
5 Mr. Margolis, and he's said, I thought that and you
6 thought something else.

7 BY MR. BEN-VENISTE:

8 Q Right. So if we can come back and
9 substitute the thats for your best recollection of
10 what he says he was operating under the impression
11 of, you can answer that grammatically suboptimal
12 question.

13 A He knew that I had said to Mr. Nussbaum
14 that I might want to pull the Justice Department
15 people out if they were simply going to watch Mr.
16 Nussbaum review the files.

17 But he, Mr. Margolis, believed that we had
18 agreed, when he and I, Margolis and Heymann, were on
19 the phone, that in effect that was a bluff. That if
20 push came to shove, eventually he might as well stay
21 and watch what happened, so that we would have a good
22 report on what happened, and we could always make

1 clear that all the Justice Department did was watch
2 the White House counsel handle files, which they
3 couldn't read.

4 That does not sound like the type of thing
5 I would have agreed on.

6 I wouldn't have decided to myself, I don't
7 think I would have decided at 10:00 o'clock in the
8 morning what was going to happen. I expected Mr.
9 Nussbaum to call back.

10 I know that because I called him up at
11 9:00 o'clock that evening and complained about his
12 not having called back, and told him I thought that
13 was unfair and in effect something like a double
14 cross, but there could easily be confusion
15 between Mr. Margolis and I as to, we could both be
16 honestly stating our view of a conversation that
17 morning.

18 Q Was it your understanding from Mr.
19 Margolis and Mr. Adams, when they returned to the
20 Department on the 22nd, that Mr. Nussbaum advised
21 them that he could no longer keep the office secured
22 or the documents segregated any longer?

1 A Yes. That's what they told me when they
2 returned on the 22nd.

3 Q Okay.

4 And did Mr. Adams or Mr. Margolis indicate
5 to you in substance their understanding that there
6 were personal financial and other documents of Mr.
7 and Mrs. Clinton in Mr. Foster's files?

8 A I can't remember when, but I think from a
9 very early date, I assumed that there were both
10 personal materials of President and Mrs. Clinton, and
11 government materials in Vince Foster's files.

12 Q And did Mr. Adams advise you that it was
13 Mr. Nussbaum's intention to provide the personal
14 Clinton documents to a personal Clinton attorney?

15 A I may be getting my dates wrong, but I
16 thought that they had done that by the time I saw
17 Adams and Margolis when they returned on the night of
18 the 22nd.

19 Q Well, I wanted to make a distinction
20 between, so that you're not confused, and I don't
21 mean to be confusing, the distinction between Mr.
22 Foster's personal documents --

1 A Oh, I'm sorry. Same mistake I made
2 before.

3 Would you ask the question again, Mr. Ben-
4 Veniste?

5 Q I thought we had cleared up and left
6 behind the issue of Mr. Foster's personal
7 documents?

8 A And there the only ones I know anything
9 about, okay.

10 Q Were returned to the Foster family via the
11 Foster attorney who was present.

12 A Jim Hamilton, that's correct.

13 Q A partner of Jim Hamilton's actually.

14 A Okay.

15 Q And were you told by Mr. Adams that there
16 were also Clinton personal documents, financial and
17 other records?

18 A I believe I knew that at a very early
19 date, as early as this.

20 Q And were you advised by Mr. Adams that it
21 was Mr. Nussbaum's intention to turn those documents
22 over to a Clinton personal attorney?

1 A I am pretty vague on this, but I think
2 that's quite possible.

3 (Pause.)

4 Q Now, when you indicated that fairly early
5 on, you had the view that you wanted the FBI in the
6 investigation, what did you mean by that?

7 This is before the torn up note is found.

8 A It's before there's any problem
9 whatsoever.

10 I was just worried that the Park Police
11 would be the group most familiar with suicides but
12 out of their depth in dealing with White House
13 personnel, people they had never seen, people they
14 hadn't dealt with before, and that they would need
15 the help of the FBI in that.

16 In other words, the setting for the
17 investigation I was afraid was one that they would
18 need help with.

19 Q And you wanted to ensure that, to the
20 extent possible, the Park Police at least knew that
21 this was a resource that would be available to them,
22 and indeed you were even encouraging them to draw

1 upon that resource?

2 A And when I first raised it with them, I
3 was already told that they had, themselves, reached
4 that conclusion and made that request.

5 Q Let me see whether I can help refresh your
6 recollection with regard to the question of Mr. Adams
7 reporting that it was Mr. Nussbaum's intention to
8 have the Clinton's personal documents sent to an
9 outside personal attorney.

10 Actually, let me just show it to you.

11 MR. LUSKIN: If I could have the page
12 number because I don't have it with me.

13 MR. BEN-VENISTE: Page 178 of Adams.

14 BY MR. BEN-VENISTE:

15 Q I thought from Adams' testimony, I
16 thought that there were, my recollection is
17 that there were three piles; one for turning over to
18 the personal attorney of the Foster family, those
19 were Foster's personal documents; the other was
20 documents that were going to be parceled out for
21 working on by other White House counsel people, and
22 the third was documents that he was working on for

1 the personal legal matters of the Clinton's and those
2 were going to be given to the Clinton's personal
3 attorney.

4 A That sounds familiar to me. I think I was
5 probably told that at the time.

6 Q When you say, at the time, you're
7 referring to at or about the time that Mr. Margolis
8 and Mr. Adams came back to the Department of Justice
9 on the 22nd of July?

10 A That's what I mean.

11 Q Now in connection with your handwritten
12 notes, which were produced prior to your departure
13 from your position as Deputy Attorney General in
14 February of 1994, do I understand that when you were
15 compiling the section that we have, marked F-160
16 through -165, relating to the Foster suicide, that
17 you discussed, with Mr. Margolis and Mr. Adams, their
18 recollections to help refresh yours?

19 A Yes.

20 Q And that you looked at whatever
21 documentation was available, and that you talked to
22 Ms. Monaco, and reviewed whatever materials she had

1 available?

2 A That's correct.

3 And I think my secretary, Patricia
4 Beninger, was also there with whatever files there
5 were in the Department.

6 Q Do you remember how long it took you to
7 go through that material and work up your
8 chronology?

9 A I think less than two hours, maybe an
10 hour, somewhere between an hour and two hours.

11 Q And I take it that you extracted, from the
12 materials en toto that were presented to you,
13 including the individual recollections of the persons
14 you have mentioned, that information which coincided
15 with your recollections and that total amount of
16 information provided to you was boiled down to the
17 essentials that are reflected in your notes?

18 A Yes.

19 Q Did you deliberately omit any portion of
20 anyone else's notes or recollections which coincided
21 with your own recollection for any purpose?

22 A No.

1 Q I want to go now to the 27th of July.

2 A Yes.

3 Q And talk about the circumstances of Mr.

4 Nussbaum producing the torn up note, and then
5 assembling it in your presence.

6 You say that during the course of that
7 procedure, various people touched the pieces of the
8 note and that at one point, some of them fell on the
9 floor?

10 A Did you hear that?

11 That was the instruction by my attorney
12 not to doodle on the original of the notes.

13 (Laughter.)

14 Q Sound advice, worth at least the hourly
15 rate --

16 (Laughter.)

17 THE WITNESS: Go ahead.

18 BY MR. CHERTOFF:

19 Q On the occasion earlier this morning
20 when you described how the notes might have fallen
21 on the floor, you made a gesture with your
22 notepad, which indicated that the, that simply

1 flapping a note pad or placing it on the table
2 might have created sufficient wind velocity to blow a
3 scrap of paper off a glass-topped table and onto the
4 floor.

5 Is that an accurate characterization of
6 how you described this process might occur?

7 A Yes.

8 Q And, as a matter of fact, there was an
9 investigation into whether any identifiable
10 fingerprints could be found on the note.

11 Were you aware of that investigation?

12 A I'm quite sure I was.

13 I don't remember what the results are, in
14 part because I don't -- well, I don't remember what
15 the results are.

16 Q Well, if it would refresh your
17 recollection, at that point, they recovered no
18 identifiable prints and indeed the only print left on
19 the note fragments that could be identified that had
20 sufficient characteristics or points to be identified
21 was a palm print and that palm print was subsequently
22 identified as Mr. Nussbaum's, but that was probably

1 at a point after the initial investigation had
2 concluded.

3 Does that comport with your
4 recollection?

5 A I don't know what you mean by after the
6 initial investigation was concluded.

7 Q There were no existing prints to match the
8 palm print against, and then subsequently we have
9 learned that Independent Counsel took palm prints
10 from all of the people who were likely individuals to
11 have handled the note, and that among those,
12 Mr. Nussbaum's palm print matched the palm print on
13 the note.

14 A I have a vague memory that there was
15 nothing useful obtained by the fingerprint effort.

16 Q Okay.

17 Now, did you learn at some point that
18 there was a missing portion, that there was a missing
19 piece out of the note?

20 A Yes, though I don't know -- I might have
21 known that at the very beginning, Mr. Ben-Veniste,
22 and I may not have learned it -- at all.

1 I know there was a missing piece.

2 Q Do you know whether or not the piece was
3 missing as of the point that it had been discovered
4 by Mr. Neuwirth?

5 In other words, at the point that he
6 assembled the note, where he replies that there was
7 some piece missing.

8 A I'm afraid I just don't remember.

9 Q When you say that the FBI had analyzed the
10 note using their forensic capabilities of the FBI
11 lab, and had determined that there was no evidence
12 that the --

13 Well, why don't you characterize, rather
14 than have me do it, what your understanding is that
15 the FBI laboratory experts had concluded?

16 A I just remember getting nothing that was
17 useful in resolving the questions out of the study of
18 the note.

19 I also remember that we submitted Vince
20 Foster's yellow pad, with indentations on it, and
21 that also turned out not to have, it turned out to
22 have writing but writing that was not in any way

1 relevant to Vince Foster's death.

2 And indeed that the handling of that and
3 the return of it to the White House with all copies
4 is exactly the way I would have hoped we could handle
5 the whole thing.

6 Q So there was no indication from any test
7 that the FBI had performed that there had been any
8 tampering with the note.

9 Is that correct?

10 A No.

11 Do you have available to you the FBI
12 report of its investigation?

13 Q We have received, from the Department of
14 Justice, FBI documents responsive to our requests,
15 which I believe to have been inclusive, and there
16 is the result of fingerprint and other testing by
17 the FBI lab contained in the materials we have
18 received.

19 A And interview reports, or not?

20 Q And interview reports. And that really,
21 in a moment, I will get to that.

22 With respect to the discussions you had

1 with Roger Adams and David Margolis, subsequent,
2 immediately subsequent to the discovery of the note,
3 when you said you had talked to them about the search
4 of the briefcase on the 22nd, Mr. Chertoff asked you
5 a question perhaps a second time you discussed the
6 search of the briefcase with him.

7 And I think the question suggested that
8 Mr. Margolis and Mr. Adams said to you that Mr.
9 Nussbaum had looked into the briefcase.

10 I'd like to be very careful about getting
11 your best recollection on that.

12 Initially, you testified they told you
13 that Mr. Nussbaum had looked into the briefcase and
14 had removed files.

15 Did anyone tell you that Mr. Nussbaum had
16 looked into the briefcase after the files were
17 removed from it?

18 A I don't think so.

19 I believe they simply described it as
20 an event where only he handled the briefcase,
21 reached in, pulled things out, and said now it's
22 empty.

1 Q I wanted to get to one thing that you
2 mentioned about the press report on July 23rd, that I
3 think you testified indicated that the Department of
4 Justice had supervised the investigation?

5 A I haven't gone back and looked but that
6 was my understanding.

7 Q What I would like to show you, and I think
8 there may be some potential for confusion here about
9 what was released by the White House by way of a
10 statement, and what was reported in the newspaper.

11 I have --

12 MR. BEN-VENISTE: Off the record.

13 (Discussion off the record.)

14 BY MR. BEN-VENISTE:

15 Q I have here, and I'll show to Mr. Chertoff
16 a copy of a Washington Post story that probably comes
17 off in NEXUS reflecting an Anne Devroy story of
18 July 23rd, 1993, that I'd like to show you.

19 And while I'm doing that, maybe we could
20 take a short break, and then I'll be wrapping up
21 pretty quickly after that.

22 (Recess.)

1 BY MR. BEN-VENISTE: (Resuming)

2 Q Mr. Heymann, is that the newspaper story
3 that you alluded to earlier?

4 A I think I did all of this orally,
5 Mr. Ben-Veniste, but it seems like the account I got
6 because the term that I remember hearing was that the
7 Justice Department had supervised this.

8 Q Do you know whether this was something
9 that the White House had put out; or something which
10 perhaps some reporter may have interpreted
11 incorrectly?

12 A I do not know.

13 Q And indeed the story that you have in
14 front of you, which is The Washington Post Story of
15 the following morning, doesn't say that the
16 Department of Justice supervised the investigation?

17 A It says that:

18 "Foster's office was searched yesterday in
19 the presence of officials from the
20 National Park Service, the Justice
21 Department, the FBI, and the Secret
22 Service, under their supervision, and in

1 the presence of a Foster family lawyer,
2 White House counsel Bernard Nussbaum
3 examined ..."

4 So he puts himself under the supervision
5 of the people he was supervising.

6 Q But you don't know whether that
7 interpretation of the facts was an editorialization
8 by the writer, or something that the White House
9 intended to misconstrue?

10 A I do not know.

11 Q Now when you directed Mr. Margolis to have
12 the FBI conduct an aggressive investigation into the
13 circumstances of the finding of the note, I believe
14 it's your testimony that you didn't have in mind what
15 investigative predicate the FBI would use to open
16 such a file or investigation.

17 Is that correct?

18 A That's correct.

19 Q That in your view you had certainly not
20 reached a conclusion that anyone had likely engaged
21 in any obstructive conduct at that point?

22 Is that correct?

1 A That is correct.

2 Q But what you wanted to do is to ensure
3 that there was public confidence that the Department
4 of Justice and the FBI were acting in the most
5 appropriate fashion in view of this disclosure.

6 Correct?

7 A Correct.

8 Q And so you took the step of saying to
9 David Margolis, I want the FBI to look into this
10 matter thoroughly and aggressively and to determine
11 whether there has been any impropriety here?

12 Is that a fair characterization of what
13 you told him?

14 A That is an entirely fair characterization.

15 Q Then the next thing you heard was that the
16 FBI was at the White House and, as a predicate for
17 beginning their interviews, telling people 'we are
18 investigating a possible obstruction of justice'?

19 A That's correct.

20 Q And that came to you as something of a
21 surprise because you didn't envision that this
22 particular scenario of the FBI telling people they

1 were investigating obstruction of justice would
2 eventuate?

3 A That is true, to the best of my memory,
4 Mr. Ben-Veniste.

5 You know, it's conceivable that I had been
6 told that it would be an obstruction of justice
7 investigation, but I don't think so.

8 Q Then when you were presented with what had
9 occurred and you thought it through and you thought
10 about what the FBI needed for its purposes to be able
11 to perform the task that you had assigned, you
12 recognized that, well, that is the way it has got to
13 be?

14 Is that so?

15 A That is correct.

16 It was as close a Title as you could find.

17 Q So that you were interested in the end
18 result of the investigation or the inquiry that the
19 FBI was performing, and you were not concerned with
20 the cosmetics of what the investigation was called?

21 Is that correct?

22 A I --

1 Q Not concerned initially with the
2 cosmetics.

3 A That's correct.

4 Q And then when you recognized that this was
5 the only way they would be able to undertake the
6 responsibility that you had delegated to them, you
7 accepted that?

8 A Yes.

9 Q Now with respect to the question of White
10 House counsel sitting in on interviews, I take it
11 from your answers to Mr. Chertoff's questions that
12 you did not focus on the question of White House
13 counsel sitting in on interviews prior to the
14 launching of the inquiry into the handling of the
15 note, or the discovery of the note?

16 A There may have been by then complaints
17 from the Park Police, but I simply don't remember.

18 Q Did you think that it was in the days
19 after, immediately after the suicide, that it was
20 inappropriate for White House counsel to sit in on
21 interviews with the secretaries by the police
22 regarding their knowledge of Mr. Foster's mental

1 health and what had occurred before?

2 A The question of White House counsel
3 sitting in on interviews is a perennial one. There
4 has never been a White House, in the eight or nine
5 that I've known, that has not insisted on White House
6 counsel, to the best of its ability, sitting in on
7 interviews of White House personnel.

8 I believe that most Senate and House
9 Committees do the same. Investigators don't like it.
10 I don't regard it as suspicious that any White House
11 wants its counsel sitting in so it knows that's going
12 on.

13 At this stage in the proceedings, though,
14 enough had gone on that I was simply going to put a
15 stop to it.

16 Q Right.

17 I wanted to make the distinction between
18 the initial sitting in of White House counsel in the
19 interviews immediately following the suicide and the
20 inquiry that you had directed be undertaken regarding
21 the circumstances of the discovery of the note; and
22 you make that distinction.

1 A That's right.

2 Q At this point you felt that it would be
3 inappropriate and that it would send the wrong
4 message in terms of public confidence for White House
5 attorneys to sit in on interviews?

6 Is that fair?

7 A That's correct.

8 In more general, Mr. Ben-Veniste, there
9 had been a sense developing -- there was a question as
10 to who was controlling all the proceedings as they
11 went on, and the White House asserted too much
12 control by far early on, and at this stage I thought
13 that the calls should all be made by the
14 investigative agencies.

15 They should interview who they wanted,
16 where they wanted, the way they wanted.

17 Q Now finally with respect to the question
18 Mr. Chertoff posed regarding what you have seen in
19 the newspaper about the overhearing of a remark made
20 by Mr. Sloan to Mr. Nussbaum, according to one
21 witness, on July 22nd, 1993, was it the FBI who made
22 the determination about who to interview in this

1 inquiry that you directed be undertaken following the
2 discovery of the note?

3 A They would have determined, and we would
4 have suggested names to them in all likelihood,
5 Mr. Ben-Veniste, and they certainly interviewed
6 Mr. Sloan at that time.

7 Q And indeed there were two FBI agents
8 present at the July 22nd procedure itself?

9 Is that correct?

10 A That's correct.

11 And they also were interviewed.

12 Q According to the records we have been
13 provided, Mr. Spafford, who is the individual being
14 quoted in the newspaper as having overheard the
15 conversation in question, was not interviewed by the
16 FBI.

17 Do you have any reason to believe, if that
18 is the case, it was other than inadvertence?

19 A No, I have no reason to believe it would
20 be other than through inadvertence. When I looked
21 these over yesterday, there was a -- not an interview,
22 but a description by the people who were present -- it

1 took some different form than an interview, and I
2 wonder whether Mr. Spafford might be in that form of
3 document.

4 MR. LUSKIN: Perhaps it would be fairer to
5 ask him in another. I mean, this assumes a lot of
6 things that really aren't in evidence: that he was a
7 percipient witness; that he was not interviewed.

8 It may be better to ask whether he is
9 aware of anything that would indicate if someone,
10 through his knowledge, the FBI was directed to either
11 interview or not interview Mr. Spafford, and then we
12 can exhaust his percipient knowledge on that point,
13 rather than assuming a lot of things.

14 THE WITNESS: I do not know of any effort
15 to exclude anybody from interview, and I would have
16 been outraged and would have immediately rejected it
17 had I known of it.

18 MR. BEN-VENISTE: May I have just a
19 moment?

20 (Pause.)

21 I have no further questions. Thank you.

22 MR. CHERTOFF: I just have about five

1 minutes with regard to the last questions.

2 FURTHER EXAMINATION

3 BY MR. CHERTOFF:

4 Q Regard PH-1, which is also F-160 through
5 F-165, which are your notes which were compiled in
6 February of 1994 in a meeting with others, am I
7 correct that you noted down those aspects of this
8 matter in which you had some personal involvement
9 either because you personally had a contact, or you
10 had discussions with someone after the fact where
11 they reported on things to you?

12 A All of that was included, Mr. Chertoff.
13 There may be in these notes things that I was simply
14 told on that occasion, such as David Margolis says
15 Bernie Nussbaum said this on that occasion. I
16 haven't gone over it with that in mind.

17 Q But you weren't making an effort in these
18 notes to compile every bit of knowledge everybody
19 had?

20 A No.

21 Q It was directed really more to recording
22 what you felt would be pertinent to your own future

1 testimony?

2 A Exactly.

3 Q I also want to direct your attention to a
4 question that Mr. Ben-Veniste asked a short while ago
5 regarding -- when he read you some testimony by Mr.
6 Adams concerning three piles that had been prepared
7 or assembled during the office review on the
8 afternoon of the 22nd.

9 I believe your testimony was that you had
10 some kind of vague recollection of being told about
11 that?

12 A Yes.

13 Q To the extent you can plumb that vague
14 recollection, was it your sense that --

15 MR. BEN-VENISTE: Excuse me. That wasn't
16 the question. The question was whether he was told
17 that there were Clinton personal records that would
18 be sent to the personal attorney.

19 MR. CHERTOFF: Right.

20 BY MR. CHERTOFF: (Resuming)

21 Q Do you recall being asked about that?

22 A Yes.

1 Q And I think your testimony was that you
2 had vague recollection of being told that by
3 Mr. Adams?

4 A Yes.

5 Q To the extent you can plumb that
6 recollection, did Mr. Adams indicate to you that he
7 had been under the impression that as of the time he
8 left the White House all of the personal files had
9 been set aside and were placed in a single pile on
10 the desk?

11 A I have no -- I can't plumb that.

12 (Laughter.)

13 THE WITNESS: I've done all the plumbing I
14 can do.

15 (Laughter.)

16 (Discussion off the record.)

17 BY MR. CHERTOFF: (Resuming)

18 Q On July 22nd when you had your
19 conversation with Mr. Nussbaum earlier in the day,
20 did you at some point offer to send over lawyers from
21 the Office of Legal Counsel if he felt that would
22 make him more comfortable in terms of dealing with

200

1 issues of privilege?

2 A Again I have a vague, and I don't feel
3 terribly reliable, memory that I did propose
4 something like that, Mr. Chertoff. We're talking
5 about 700, 800 days -- 700 to 800 busy days ago. I
6 don't remember it very well.

7 Q Finally, let me direct your attention to
8 some testimony I think you gave early on in
9 examination by Mr. Ben-Veniste in which you were
10 asked some questions about what would happen if a
11 subpoena had been issued.

12 I think you indicated that you thought as
13 of the state of the situation on July 21st, had a
14 subpoena been issued that would not have been a
15 sufficient basis to overcome any privileges under
16 U.S. v. Nixon?

17 Is that correct?

18 A Yes.

19 Q Now had a subpoena -- again, to follow along
20 the thought of that, to make sure I have it
21 correctly -- had there been a subpoena issued, and had
22 Executive Privilege been claimed as to certain

1 documents, am I correct that the procedure would have
2 been to segregate those and prepare some kind of a
3 log or a record of all the material that was being
4 withheld so that it could be addressed later with the
5 courts, or whatever, if necessary?

6 A That -- I'm confused about the question.

7 That is the procedure I envisaged, that we
8 would set aside particular documents. What I meant
9 to answer Mr. Ben-Veniste is that without that
10 procedure, and without having any idea of the name of
11 a single document in Vince Foster's office, I don't
12 think we could satisfy U.S. v. Nixon because I think
13 U.S. v. Nixon would require us to specify what we
14 were looking for.

15 Q Well my question is: If a subpoena had
16 been issued for the documents in Mr. Foster's
17 office --

18 A All of them?

19 Q All of the documents.

20 -- and there had been a request to withhold
21 some of the documents based on privilege of any sort,
22 in order to address whether in fact such a privilege

1 were valid would it not be the normal practice to
2 identify in some generic way each document as to
3 which a privilege was claimed so that at some future
4 point, if it had to be resolved in court, it would be
5 a record of exactly what documents were in the
6 office, what documents were being withheld, and what
7 documents were being turned over?

8 MR. LUSKIN: Before he answer, are we
9 clear here that we are now sort of stringing out a
10 hypothetical of what would have happened if a
11 subpoena had been litigated, if you will?

12 MR. BEN-VENISTE: Are you talking
13 specifically about Mr. Foster's office?

14 MR. CHERTOFF: I am --

15 MR. BEN-VENISTE: Were --

16 MR. CHERTOFF: May I finish?

17 I am dealing with the question you raised,
18 Mr. Ben-Veniste raised early on where there was a
19 question of what would happen, or suggesting the
20 possibility of a search warrant under a subpoena.

21 I am trying to follow that up with getting
22 a sense of what the procedure is or would be if a

1 subpoena had been issued for documents in the office.

2 MR. BEN-VENISTE: But in your hypothetical
3 you were assuming that somebody would issue a
4 subpoena calling for the production of all the
5 documents in Vincent Foster's office.

6 MR. CHERTOFF: Right. I am assuming that.

7 MR. BEN-VENISTE: And then you assume that
8 the next step would be that somebody would be
9 providing a privilege log and an index, as opposed to
10 moving to quash that subpoena?

11 MR. CHERTOFF: Can I get the question out?

12 MR. BEN-VENISTE: I thought you had asked
13 the question.

14 MR. CHERTOFF: Well, let me make sure we
15 have the question straight.

16 BY MR. CHERTOFF: (Resuming)

17 Q If a subpoena had been issued and someone
18 wanted to challenge the production based on privilege
19 grounds, is it not the practice that they would
20 identify in some generic form each and every one of
21 the documents being withheld so that at some future
22 point, if one wanted to have a resolution of the

1 difference of opinion over whether something was
2 privileged, everyone could be clear as to what the
3 universe of withheld documents would be?

4 A I honestly don't know what the practice is
5 here. I know that in Nixon v. U.S., out of several
6 strokes of good fortune, the Independent Counsel were
7 able to identify on their own specific conversations
8 which they had reason to believe were recorded in one
9 way or another, and so they were able to go in and
10 say, or we were able to go in and say we would like
11 any recording of this conversation, and for this
12 reason.

13 I do tend to agree with the implication of
14 Mr. Ben-Veniste's response that a court wouldn't
15 require the White House counsel to do anything if it
16 simply received a subpoena asking for all the
17 documents in the White House counsel's office.

18 I think it would probably turn to the
19 person seeking the subpoena and say you have to be
20 more specific than that.

21 Q Supposing there had been a request for all
22 documents in Mr. Foster's handwriting?

1 A Oh, I think it would be the same. It may
2 be all the documents that bear upon his state of mind
3 at the time. That would be possible. And then you
4 might have identified documents, and then a claim of
5 Executive Privilege. That might have worked.

6 Q Now in the procedures you envisioned that
7 would occur as of the time that you sent Mr. Margolis
8 and Mr. Adams to the White House on the 22nd, did you
9 envision that the category of documents that would be
10 treated as privileged would be itemized in some
11 fashion?

12 A I envisaged that the first determination
13 would be whether it was a matter of interest to the
14 law enforcement people. I haven't been clear about
15 this, Mr. Chertoff.

16 If Mr. Nussbaum wanted to insist on that
17 being restricted to Adams and Margolis, I think I
18 would have wanted them to agree, because I couldn't
19 vouch for the FBI agents, the Park Police, et cetera.
20 But hopefully they would have been able to discuss
21 it.

22 Once the relevant were identified, I

1 imagine that Mr. Nussbaum or others would say: Of
2 these you can have a third right now; but the
3 following two-thirds we have to look at hard for
4 Executive Privilege. Give us two days. We'll get
5 back to you, and we'll either give them to you, or we
6 will assert Executive Privilege, and then we would
7 have had to have worked out whether we felt we were
8 entitled to overcome the Executive Privilege because
9 of the importance of the document.

10 Q Now as it happens, the way the procedure
11 was ultimately conducted on the 22nd, am I correct
12 that, to your knowledge, there is no record of any
13 inventory of any kind as to which documents, if any,
14 Mr. Nussbaum believed a privilege was applicable?

15 A I don't think there's any -- to my knowledge
16 there's no record of all the documents that were in
17 the office at all, and no record of all the documents
18 to which he believed the privilege was applicable.

19 At least to the best of my knowledge, I
20 know of no such record.

21 MR. CHERTOFF: That's all. Thank you.

22 MR. BEN-VENISTE: Just a couple of follow-

1 up.

2 FURTHER EXAMINATION

3 BY MR. BEN-VENISTE:

4 Q When I was asking before about the
5 likelihood of a subpoena or a search warrant issuing
6 and whether you discussed that, I think your answer
7 was that it was not discussed and it was not anything
8 seriously considered?

9 Is that correct?

10 A It could have been a -- could we get a
11 search warrant? Probably not -- a discussion of ten
12 seconds, but I don't remember.

13 Q Now to follow up on Mike's questions about
14 a subpoena, what steps would have to be taken in any
15 situation remotely like this for you to seek a
16 subpoena of files and records?

17 MR. LUSKIN: Again we're speaking
18 hypothetically?

19 BY MR. BEN-VENISTE: (Resuming)

20 Q Hypothetically.

21 A Well, in the first instance we would have
22 to believe that there was some reason for a suspicion

208

1 at least -- not probable cause but a suspicion that a
2 crime might be involved, a federal crime. Suicide is
3 not a federal crime.

4 Then we would have to put the matter
5 before a Grand Jury, or empanel a Grand Jury to hear
6 it. Then we could issue a subpoena from the Grand
7 Jury, but the subpoena would be subject to Executive
8 Privilege challenge because there were no specific,
9 identifiable documents that we could name in it.

10 I do think that it is possible, as
11 Mr. Chertoff was leading me in this direction --
12 possible -- I don't know whether it would succeed or
13 not -- that you could have identified it in some way
14 that required a lot of judgment to be exercised by
15 the White House counsel's office. It wouldn't have
16 given us a lot more, but you wouldn't know whether
17 you'd gotten them or not, but you could have asked
18 for all documents bearing on Mr. Foster's state of
19 mind. You wouldn't know whether you had them or not
20 have them at that point, and perhaps a court at that
21 point would say we can then argue about Executive
22 Privilege at a second stage.

1 Q So let me, you have moved very quickly
2 from the hypothetical to the practical, Mr. Heymann,
3 as we regard the situation that you were confronted
4 with on July 21st, 1993, but if I understand what
5 you're saying it is that in the first instance a
6 subpoena could not even have been requested because
7 there was no reason to believe that a federal crime
8 had been committed; indeed, any crime, unless you
9 consider suicide as a crime, and I'm not even sure
10 whether the District of Columbia or Virginia would
11 regard suicide as a crime.

12 But under the Assimilated Crimes Act you
13 would have to think about whether suicide was a
14 crime, and therefore whether it was a federal crime.
15 That process had not been considered or gone through;
16 is that correct?

17 A That's correct.

18 Q So in the first instance, you couldn't get
19 a subpoena. But even if you could get a subpoena,
20 let's go forward under the circumstances that in the
21 real world obtain when you are attempting to subpoena
22 books and records let's say from a business, you

210

1 would have to specify, would you not, what it was you
2 were seeking?

3 A Yes.

4 Q So there would have to be specificity.
5 You could not say in any reasonable situation and
6 have a reasonable Judge uphold the subpoena or
7 enforce the subpoena -- if you just say "give us all
8 your books and records"; correct?

9 A That's correct.

10 Q So that is a second reason for rejecting
11 the notion that the material in Mr. Foster's office
12 could be subpoenaed.

13 Now you are talking about a lawyer's
14 office in a third level of hypothetical. If you are
15 subpoenaing records from a lawyer's office, what does
16 your experience, and indeed expertise teach you in
17 terms of what the Department of Justice needs to go
18 through in subpoenaing records from a lawyer's
19 office?

20 A I do not remember what the regulations
21 there are, but for anything that was the work product
22 of the lawyer rather than the documents of the

1 client, you would certainly have privilege claims.

2 Q And now if you are dealing with the lawyer
3 for the President of the United States, you have got
4 on top of attorney-client privilege that you would
5 have in the extraordinary circumstance that the
6 Justice Department were seeking to enforce a subpoena
7 for a lawyer's records, you would now have the super-
8 extraordinary circumstance of compelling production
9 from a lawyer who also has a client in a position to
10 assert Executive Privilege.

11 Is that correct?

12 A That's correct.

13 Q So that your understanding of the law and
14 in your experience, that if in fact all of these
15 other prerequisites had been satisfied, which they
16 were not, in the Foster situation you would still
17 have to be extremely narrow in what you were
18 requesting, essentially documents which would reflect
19 Mr. Foster's mental state?

20 A That's correct.

21 That is assuming that suicide would -- that
22 such documents would enjoy the same importance in

1 court as documents bearing on the Watergate
2 obstruction of justice, which was a crime.

3 Q Right.

4 So getting all the way through those
5 hurdles to the point of now you have an extremely
6 narrow subpoena calling for a very limited type of
7 document, and putting aside whether without some
8 reason to believe such documents existed, and without
9 being able to specify them, you could get a Judge to
10 say you could enforce such a narrowly drawn subpoena,
11 then the White House counsel would be the one who
12 would go through the records and make the
13 determination of which records satisfy the
14 description in the subpoena?

15 Is that correct?

16 A Yes.

17 Q And it would be the White House counsel's
18 function to do that.

19 Correct?

20 A As the recipient of the subpoena, I
21 believe that would be correct.

22 Q So then at the end of the day you would

1 get all the way back to the White House counsel
2 making a determination of what documents in the
3 office reflected Vincent Foster's mental state.

4 A If that was the category it demanded.

5 Q Now did you understand at some point that
6 the Park Police was upset because they felt that
7 there had been a delay in the way the investigation
8 was going forward?

9 A The only time I have sort of a memory
10 about that is right at the very beginning.

11 Q When Park Police Officers felt that they
12 had been held up in going forward to review the
13 contents of the office --

14 A Yes.

15 Q -- and had not been able to interview
16 witnesses as quickly as they would have liked.

17 A Yes.

18 Q So that it is just at this time that
19 Mr. Chertoff's hypothetical would kick in, that you
20 would have to go through all of these different steps
21 which would, in your view, at the earliest take how
22 long to resolve? Could you even begin to estimate?

1 A It would probably be resolved shortly
2 before the next Presidential election.

3 Q It would take a long time?

4 Do I understand you to say it would take a
5 long time?

6 A It would take a very long time.

7 MR. BEN-VENISTE: I have nothing further.

8 Thank you.

9 MR. CHERTOFF: I just have a couple of
10 questions on that.

11 FURTHER EXAMINATION

12 BY MR. CHERTOFF:

13 Q If the White House had taken the position
14 that they did not want to have the Park Police look
15 at anything, and that anything should be handled by
16 way of subpoena, that fact of course would not have
17 allowed them to say they were cooperative with the
18 Park Police; correct?

19 A No, it would not have.

20 Q Now also at the time that we're
21 talking about, which is July 22nd, do you recall
22 what was actually being investigated by the Park

1 Police?

2 Had they made a determination as to the
3 cause of death?

4 Or were they investigating the cause of
5 death?

6 A I don't even know what the proper term for
7 an investigation of a suspected suicide is,
8 Mr. Chertoff.

9 I think that "investigation" has a
10 character all its own, and it is not a -- I think it is
11 an effort to determine that what appeared to be a
12 suicide was in fact a suicide and not a homicide. It
13 is generally one or the other.

14 That is the type of investigation they are
15 doing.

16 Q So it was actually an investigation of a
17 violent death.

18 A An investigation of a violent death,
19 but not opened up in the same way they would have
20 opened a homicide on Park property, opened up in
21 the way they would open a suicide. It probably
22 has a label of "probable suicide" or "possible

216

1 suicide."

2 Q But it is not a situation in which
3 there is a conclusion that there is a suicide, and
4 then the Park Police for forensic reasons or
5 psychiatric reasons are now interested in
6 determining academically why someone committed
7 suicide?

8 A No. That's correct.

9 I believe that the only interest and
10 motivation is to establish that in fact it is a
11 suicide.

12 Q And if it is not a suicide, if it turns
13 out that there is evidence that suggests it is
14 something other than a suicide, one would have to
15 continue an investigation.

16 A Yes.

17 Q Now let me go at a subpoena from a
18 slightly different angle.

19 You had indicated under U.S. v. Nixon
20 that in order to subpoena documents from the
21 President and precipitate the matter to a court
22 resolution, the Independent Prosecutor was very

1 much aided by the fortuity that the Prosecutors
2 became aware of specific items in the file that
3 allowed them to narrow their requests and make it
4 more pointed.

5 Is that a fair characterization?

6 A That's correct.

7 Q So that if for example Prosecutors were in
8 the course of some access to documents to become
9 aware of documents that might cause them to wonder
10 whether there was a potential criminal violation to
11 be examined, that would be the kind of thing that
12 then could later lead to subpoenas and more pointed
13 inquiries of the sort you have talked about?

14 A If I understand the question correctly,
15 yes.

16 MR. LUSKIN: Can we promise that we've
17 exhausted the hypothetical questions here?

18 MR. CHERTOFF: I'm done.

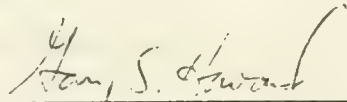
19 MR. BEN-VENISTE: Nothing further.

20 (Whereupon, at 4:37 p.m., the deposition
21 of Mr. Heymann was adjourned.)
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

218

I, GARY S. HOWARD, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires NOVEMBER 14, 1995

SENT BY:

6-27-94 : 14:59 :

GLLC-

202 514 9412: 2/ 5

July

Tues 20

Foster suicide

Found 9:00 P.M.

Wed 21assume PH has
called BN at suggestionPH → RA stand by to watch
search of Foster documentsRA → PH my role in WH
counsel's of might be a problem

AG → RA in time a problem

PH → RA 3:00 no problem

"anything to
do with his violent
death"PH · RA · DM look at the
documents -- be satisfied by looking
at first pagemeet with Capt Charles
June -- set up procedure to
check for relevance and executive
privilegewaiting for
a call from
Park Police

DM → PH I want FBI in

PH → CH bring in FBI

CH they're in

5:00

agents, park police, DM, RA, the
Newirth all in Bernie's ofc
-- agree to come back the next
morning -- will use the
system we've agreed onPark Police not
allowed into the
ofc which is
secured

BN agrees

SAV says "no"

DM says it's a done deal no

BN agrees

F 000150

return and brief PH

late call from Charlie Jones

SENT BY

6-27-94 : 15:00 :

GLLC-

202 514 9412: 3/ 5

Thurs 22

RA · DM to be 3 at 10:00 AM

RA · DM to look at stuff
 BN "Change in plan. You
 observe us as we do the
 search"

DM "have you talked to
 PH" — BN ~~I don't know~~

DM → PH what about
 this -- huge mistake --
 do we stay if BN says "no"
 -- probably stay

10:30

PH → DM — terrible mistake
 you're making a mistake --
 I'll call RA and DM back here
 -- BN → PH "I have to talk
 to some people about this"

BN → DM don't leave --
 panic by BN and CS thinking
 that they had left

1:00-

2:30

BN "we'll do it my way --
 get police in" --

~~DM "if there were X's~~
~~I'd have a sub going~~
 over documents

BN → DM "I can not keep
 the office secured or documents
 segregated any longer"

F 000 12

SENT BY:

6-27-94 15:00:

GLLC-

202 514 9412: 4/ 5

"give them to family lawyer
and get them out of BN's hands"

9:00

PH → BN -- "you ~~announced~~
us" -- BN → PH we're not
hiding anything

Friday 23

DOJ out of it -- info
from Park Police

← Tue 27

BN: wanted me there

Tues 29

AGAC -- 5:15 go to WTH
rode over with AG

Bernie reveals note

AG said turn it over

called Park Police (DPH)

BN → PH stay

BN assembled notes and
read it aloud

rode back with PPolice

Wed 28

we call FBI -- want an
aggressive investigation.

Thurs 29

Collier calls 8:25 -- visits
shortly thereafter

WTH treating PPolice unprof.

DOJ

---F 000 00

out

U

U

F 000104

SLV. BY:

6-27-94 15:01 :

GLLC-

202 514 9812: 5/ 5

PH calls Dargen 16:37, 11:00
full and vigorous investigation --
Have to let FBI interview
w/o anyone being present -- I'll
call them back when you've
assembled everyone

F 000165

**DEPOSITION OF WILLIAM B. ANDERSON, JR.
IN RE: S. RES. 120**

MONDAY, JULY 24, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of WILLIAM B. ANDERSON, JR., called for examination pursuant to notice of deposition, at 3:08 p.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.
Majority Chief Counsel
MICHAEL CHERTOFF, Esq.
Majority Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

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On behalf of the Deponent.

ALSO PRESENT: VIET D. DINH

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| William B. Anderson, Jr. | |
| by Mr. Kravitz | 3 |
| by Mr. Giuffra | 83 |
| by Mr. Chertoff | 124 |
| by Mr. Kravitz | 167 |
| by Mr. Chertoff | 173 |

EXHIBITS

| DEPOSITION NUMBER | IDENTIFIED |
|---|------------|
| William B. Anderson, Jr. Anderson Exhibits 1 and 2 | 3, 4708 |

1 PROCEEDINGS

2 (Anderson Exhibits 1 and 2 identified.)

3 Whereupon,

4 WILLIAM B. ANDERSON

5 was called as a witness and, having first been duly
6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. KRAVITZ:

9 Q Mr. Anderson, thank you for coming today
10 for this deposition. My name is Neal Kravitz, and I
11 am one of the special counsel working for the special
12 committee to investigate Whitewater on behalf of the
13 Democratic members of the Senate committee.14 As I think you are aware, we are here today
15 for a deposition which is going to be taken pursuant
16 to Senate Resolution 120, which authorizes the
17 committee to investigate certain aspects related to
18 the so-called Whitewater affair.19 I'm going to be asking you questions
20 initially here today and then either Mr. Giuffra who
21 is seated to my left, or Mr. Chertoff, who is not yet
22 here, or both, will ask you questions on behalf of

1 the Republican members of the special committee.

2 I would just ask you as one preliminary
3 matter, if at any point we ask you a question that
4 you don't understand, please let us know that the
5 question is confusing and we will try to rephrase the
6 question so that you are sure you understand it
7 before you answer.8 I'm going to show you -- actually, let me
9 just ask Mr. Dennis if he wants to make a comment on
10 the record before we start, either generally or more
11 specifically with regard to what we have marked as
12 Exhibit Number 1.13 MR. DENNIS: Yes. I wanted to place on the
14 record the fact that I have submitted an affidavit
15 which has been marked as Exhibit Number 1 which
16 relates the information I have under oath related to
17 both the polygraph conducted by the witness as well
18 as the polygraph conducted by independent counsel.
19 Even though the affidavit does not state the date of
20 the polygraph conducted by independent counsel, the
21 date was September 16, 1994, and it was conducted by
22 an agent, a polygrapher from the Federal Bureau of

1 Investigation.

2 Also, we have submitted as an exhibit the
3 witness's curriculum vitae and we have made available
4 for purposes of this deposition a copy of the
5 witness's report of I think it is August 1, 1994, to
6 be used for purposes of the deposition, but not to be
7 made an exhibit for this deposition or for the
8 hearings.

9 However, portions of that report may be
10 read into the record or can be read into the record
11 in its entirety.

12 Other than that, I think that takes care of
13 it.

14 BY MR. KRAVITZ:

15 Q Mr. Anderson, I'm going to show you what
16 has been marked as Exhibit Number 2 for this
17 deposition. Can you tell us what that is?

18 A It is a one-page resume.

19 Q Whose resume is that?

20 A William B. Anderson, Jr.

21 Q That would be you; right?

22 A Yes, that's correct.

6

1 Q When did you prepare that resume?

2 A May 1994 is the latest version of it. I
3 have noted that in the lower left-hand corner.

4 Q Is Exhibit Number 2 accurate as of May
5 1994?

6 A Yes.

7 Q Is there anything that has occurred since
8 May 1994 that you would like to add on the record as
9 far as your experiences are concerned?

10 A My first intention had been to state no,
11 nothing of substance, but as I reflect, you will see
12 up there, having done polygraphs for the Watergate
13 special prosecutor, I might later add from Watergate
14 to Whitewatergate, or something like that.

15 Q Well, let me ask you this, where are you
16 now employed?

17 A I am self-employed.

18 Q Are you self-employed as a polygraph
19 examiner?

20 A That's part of my employment. I'm also a
21 licensed investigator in Chester County, Pennsylvania
22 and I have an active life there as well.

1 Q What percentage of your work involves
2 polygraph examinations?

3 A I never calculated exactly, but 25 percent
4 of my time, something like that.

5 Q How long have you been self-employed?

6 A 20 years.

7 Q Were you also employed by the Federal
8 Bureau of Investigation at some point?

9 A Yes, I was, from February 1948 until
10 January 1975, at which time I retired.

11 Q Did you conduct polygraph examinations for
12 the Federal Bureau of Investigation?

13 A Yes, I did, many.

14 Q For how long a period of time did you
15 conduct polygraphs for the FBI?

16 A From 1960 until the end of 1974, but I must
17 tell you, there was a hiatus of a couple years in
18 there -- which is not clear to me -- when the
19 director of the FBI took offense at them and stopped
20 doing them for a while.

21 Q What training did you receive in the giving
22 of polygraph examinations?

1 A I attended what was known as polygraph
2 school number 1 at the FBI laboratory in Washington,
3 D.C. in October 1960.

4 Q How long a course was that?

5 A About a month.

6 Q And was there some certification process
7 that you went through after attending that school?

8 A Yes, there was. For the first year after I
9 was finished, I was required to send every polygraph
10 chart and opinion to the laboratory, and they would
11 look at it. They never sent any back or disagreed
12 with me.

13 I also, in order to wear both a belt and
14 suspenders, apprenticed myself to a man named Charles
15 McInerney who was the polygraph examiner for
16 Allegheny County, Pennsylvania, and he was a much
17 more rigorous taskmaster with me than the FBI. He
18 said dreadful things to me at times, but they were
19 all useful and beneficial, and Charlie was quite
20 helpful to me.

21 That was a mentor apprenticeship. That was
22 not an FBI-approved activity, but it was well worth

1 it.

2 Q What time period was it that you made
3 yourself an apprentice of Mr. McInerney?

4 A About the same period, perhaps a little
5 longer. About a year and a half.

6 Q Back in the early 1960s?

7 A It was through 1961, I think, but I'm
8 really -- I didn't take notes of that sort of thing.

9 Q And then it is your testimony that from
10 approximately 1960 through 1974 you conducted
11 polygraph examinations for the FBI; is that right?

12 A A great many, yes.

13 Q Can you approximate how many polygraph
14 examinations you conducted during that time period?

15 A I wish I had kept track. It would help me
16 in many ways. But no, I cannot be precise. I'm
17 going to say that it was probably less than 1000 but
18 not many less. Let's say between 750 and 1000.

19 Q What types of cases did you conduct
20 polygraph examinations in for the FBI?

21 A Bank robbery, kidnapping, aircraft piracy,
22 extortion, organized crime, foreign intelligence. I

10

1 have them written down in my resume, and I think
2 there are more on there. Virtually everything that
3 you can think of. Bank embezzlement particularly,
4 theft of government property, obstruction of justice,
5 perjury, white-collar crime cases.

6 Q In what types of matters have you conducted
7 polygraph examinations in the past 20 years since you
8 have been self-employed?

9 A Let me cite you the most common way that
10 I'm retained.

11 Q Okay.

12 A In a criminal case, an attorney calls me,
13 says I have a client, and the facts and circumstances
14 are such that maybe it is one to one, it is really
15 unclear as to what the fact circumstances are, and I
16 would like you to do a polygraph test on my client
17 and tell me, A, is my client telling me the truth,
18 and, B, do you think that he could successfully
19 prevail in a government polygraph test. The charges
20 range from arson to homicide and many things in
21 between.

22 Those are the criminal cases which are the

1 majority of what I would do.

2 But, in addition, we have instances where
3 persons are accused of misconduct that has not risen
4 to the level of criminal prosecution and sometimes it
5 is possible to negotiate with administrative
6 officers. Take a school teacher, for example, who is
7 accused of saying something really vulgar to a female
8 or a female teacher or one of the students.
9 Sometimes I have done that as well.

10 Mostly, however, it is contemplating
11 criminal prosecution.

12 Q Go ahead.

13 A I am retained regularly by the Philadelphia
14 Inquirer by their investigative reporter staff.

15 Q How many polygraph examinations
16 approximately have you conducted in the past 20
17 years?

18 A I can give a reasonably good estimate of
19 that. About -- between 6- and 700.

20 Q When you were working for the FBI and
21 conducting polygraph examinations between 1960 and
22 1974, did you have occasion to work with Assistant

1 United States Attorneys or other federal prosecutors
2 while you were conducting these polygraph
3 examinations?

4 A Yes.

5 Q And to your knowledge, did the results of
6 polygraph examinations you conducted during that time
7 period ever affect decisions as to whether cases went
8 forward or not?

9 A I must go back before the prosecutor and
10 say, too, that the basic use of the polygraph in the
11 Federal Bureau of Investigation was for investigative
12 guidance, with no contemplation as to prosecutive
13 decision or use as a prosecutive tool. That would be
14 the bulk of what I did.

15 I can give you a good example. If you
16 have, say, a substantial embezzlement from a bank and
17 it is clear from the accountant's investigation that,
18 let's say, six people had access to the departed
19 funds. It is extremely valuable, then, to enlist the
20 cooperation of each of those people and give each a
21 polygraph test so that you didn't -- so that the
22 investigator didn't spend his time investigating one

1 through six, but rather focused the investigation.

2 Q On a particular person who failed the test?

3 A On a particular person, yes.

4 Q To your knowledge, were criminal charges
5 ever dropped against any suspect while you were
6 working at the FBI as a result of polygraph
7 examinations indicating that a suspect was telling
8 the truth when he said he had not committed the
9 offense he was a suspect in?

10 A Yes. Investigations were stopped,
11 proceeding prosecution. I have to answer it by
12 saying to you that on a number of occasions, I said
13 to the case agent you don't know what the hell you
14 are talking about, which did not sit well, but it was
15 overall ultimately beneficial.

16 Q So it is fair to say that in your
17 experience in making judgments about whether to
18 prosecute criminal suspects, prosecutors have paid
19 attention and relied on results of polygraph
20 examinations you have conducted?

21 A Yes, and that's certainly true both in FBI
22 experience and later in private practice.

1 Q Have you ever testified in court as an
2 expert witness regarding polygraph examinations you
3 have conducted?

4 A Yes.

5 Q Have those been in criminal matters or
6 civil matters or both?

7 A Yes. I could cite one if you wish.

8 Q Fine, if you would.

9 MR. GIUFFRA: Did you say both criminal and
10 civil?

11 THE WITNESS: I think he said both civil
12 and criminal, and I was answering yes to criminal.

13 BY MR. KRAVITZ:

14 Q Why don't we focus first on criminal and
15 then I can ask you again about civil. You were going
16 to cite us to a criminal case in which you testified?

17 A I have to give my memory a chance to get on
18 the screen here about the civil part, so we can set
19 that aside. The criminal part is clear to me because
20 that was a preponderance of what was done.

21 A good example will be what was known as
22 the art museum murders in Philadelphia, where a young

1 couple right after a high school dance went over
 2 behind the Philadelphia Art Museum, probably embraced
 3 and smoked a lot of pot and went to sleep in the back
 4 of the car. They woke up, a group of men, perhaps
 5 five of them, surrounded them, raped her many times
 6 and held him in the fountain and drowned him until he
 7 was dead. She ran up the street with no clothes on.
 8 And the city got terribly aroused, as you might
 9 expect, over that murder in the icon of the city.

10 In any case, a number of people were
 11 convicted of that homicide and those rapes.
 12 Ultimately, the Philadelphia Inquirer, for reasons of
 13 their own, determined that one of the defendants
 14 probably hadn't done it and he had already served
 15 eight years in the state correctional institution.
 16 So at their employment, I went to the Dallas State
 17 Correctional Institution and gave him a rigorous
 18 polygraph examination, which he passed. He said he
 19 wasn't present, he hadn't done either of those
 20 things.

21 The Inquirer published the story and the --
 22 let me see if I can get it straight now because there

1 are legal maneuvers here that I'm not really
 2 thoroughly conversant with. The city kind of
 3 resisted, but, in effect, the then-district attorney,
 4 a fair-minded man, said we will open the tubs, as it
 5 were, in the homicide bureau, in the district
 6 attorney's office, and for the first time gave the
 7 defense access to all the witness statements, and
 8 profound witness statements had been concealed from
 9 the defense.

10 Ultimately there was a long hearing over
 11 that, and I testified as an expert witness about the
 12 probability -- not the probability -- in my opinion,
 13 that he had not committed the crime, and the
 14 conviction was set aside.

15 Q So, in other words you testified at a
 16 post-conviction, a post-trial hearing rather than at
 17 the trial itself?

18 A Not at the trial itself, no.

19 Q Have you ever testified at an actual trial
 20 or pretrial hearing in a civil case as an expert on
 21 polygraph examinations?

22 A A pretrial hearing in a civil case?

1 Q Or trial hearing.

2 A A trial hearing in a civil case?

3 (Pause.)

4 It takes me a little while, because when
5 you add all those numbers, I have to get them out of
6 the pigeonholes.

7 I testified in a Philadelphia County Court
8 civil case where a restaurant employee had been
9 dismissed in consequence of failing a polygraph
10 test. I testified as an expert witness on behalf --
11 I have to think slowly here -- on behalf of the
12 restaurant chain that the process which had been
13 carried out was correct, proper, reasonable, very
14 sensible and it had been well done.

15 Would you like to know the result?

16 Q Sure. Why don't you tell us what the
17 result was.

18 A It worked out the way you might expect,
19 that the defendant was held blameless.

20 Q And the employee's dismissal was upheld?

21 A It was upheld and he didn't receive the
22 large amount of money that he was asking for.

1 Q Let me just ask you, as a general matter,
2 when you are asked to conduct a polygraph examination
3 of a particular person relating to a particular
4 event, what is your goal in conducting that
5 examination?

6 A To give an opinion to which I can sign my
7 name to and be satisfied that I have done it
8 correctly.

9 Q An opinion as to what?

10 A Truthfulness.

11 Q Of the person who is being tested?

12 A Correct.

13 Q Just again as a general matter, what type
14 of information and what detail do you require before
15 conducting a polygraph examination in order to
16 conduct a meaningful test?

17 A I would have to say that no one definition
18 will satisfy that. It really depends upon the
19 circumstances of the case. Sometimes we have
20 issues -- and I will use that word "issue" quite a
21 bit because it is obvious that there are two sides of
22 the story or they wouldn't need me.

1 The issue sometimes covers a long
2 chronology of alleged behavior and conduct and very
3 complicated things, so in that I must know the whole
4 long chain of things. An example would be a person
5 accused, say a government employee, of accepting
6 bribes over a 20-year period while he worked at the
7 defense supply office in Philadelphia. That's a
8 complicated one where you have to figure out how much
9 is there here, what's important and what isn't,
10 because you can't go on forever. But you have to
11 know a great deal --

12 Q Is the purpose --

13 A -- in that respect. But there are other
14 issues which are really very simple. I give you a
15 civil case where Lafayette University had dismissed a
16 student, male, for an accusation of rape, and the
17 real issue was had she given permission or not, and
18 it was pretty simple.

19 Q Is the purpose in gathering information
20 about the event at issue so that you can determine
21 precisely what questions to ask the person being
22 tested?

20

1 A Yes. That's the whole point. If I could
2 venture beyond that a little bit. Sometimes you want
3 to know a fair amount so that you can simplify it to
4 what really matters. I always try to make a joke of
5 it and say the old lady who said I'm sorry I had to
6 write you such a long letter, I didn't have time to
7 write a short one.

8 In a way that's what I try to do. You take
9 a mass of information and distill it to maybe four to
10 six central issue questions, sometimes less than
11 that, to make it simple, plain and stark so the
12 person being tested can't hide in the bushes. It is
13 really all there.

14 Q When you were working for the FBI and you
15 were conducting polygraph examinations in
16 investigations related to criminal investigations,
17 who did you receive information from? Was it the
18 criminal investigators?

19 A Yes. We called them the case agent.

20 Q And sometimes the prosecutors working on
21 the case as well?

22 A Yes.

1 Q So it wasn't unusual -- it is not unusual
2 in your experience for the polygraph examiner to
3 receive information from lawyers working on cases?

4 A I would say it is virtually invariable,
5 because I know nothing about it, and I have to say to
6 them you tell me what the issue is here, I want to
7 hear it. I call that getting pumped up.

8 Q Since you have been self-employed and you
9 get hired on a per case basis, is it your general
10 practice to get the information about your cases from
11 the lawyer or investigator who is hiring you?

12 A Very much so, yes.

13 Q Do you ever obtain information about a case
14 or an event from the person who is actually being
15 tested before the test begins?

16 A Yes. Would you like me to explain how that
17 happens?

18 Q Please.

19 A We have the issue and usually with counsel,
20 I haven't seen -- the client will call, and I haven't
21 seen the client. Counsel tells me what the facts
22 are. Counsel are human and they tend to want to tell

22

1 me all the facts, particularly the ones which
2 illustrate that the client is telling it right. I'm
3 unimpressed by that sort of thing. I have been
4 listening to that for a number of years and you let
5 them run on and let them run on. You don't say
6 please, let's be more objective. You just let them
7 run on, because your purpose is to draw from them
8 enough facts so that you can shape the questions.

9 It would be rude to say you are terribly
10 partisan. Some attorneys are, some aren't. Some of
11 them really want to know is my client telling me the
12 truth.

13 Having got from the attorney as best you
14 can what he thinks the facts are -- and sometimes
15 they don't know it very well and sometimes they know
16 it real well, there are attorneys and there are
17 attorneys -- after you have done that, what I
18 invariably do is write out my own questions. I take
19 what they say because I couldn't work without it.
20 They have defined the issue at hand. And then I
21 usually -- sometimes they give them to me in writing
22 and sometimes orally.

1 Then I usually distill that paragraph
2 lawyer-like question into a simple 10- or 12-word yes
3 or no question. Taking their raw material, I turn it
4 into a very simple sentence that has a verb in it to
5 which they can answer yes or no.

6 Q And that's the question or questions that
7 will be asked of the client?

8 A They are the issue questions, they are the
9 issue questions.

10 Q I take it you are paid for your work as a
11 polygraph examiner in the past 20 years since you
12 have been self-employed?

13 A I always say I was a public servant for 27
14 years, now I want to be paid.

15 Q So the answer is yes?

16 A Yes, very much so.

17 Q Is your fee determined in advance of the
18 time that you conduct the polygraph examination you
19 have been hired to conduct?

20 A Only in the most general fashion, because I
21 work on the basis of an hourly rate. So much for
22 getting pumped up, reaching opinions and so on, so

1 much for face to face.

2 Q Is your hourly rate determined in advance
3 of the polygraph?

4 A Yes.

5 Q And agreed to between you and the party
6 hiring you?

7 A I always tell them that, always.

8 Q Does your rate change depending upon the
9 results of your examination?

10 A It never has. Let me cite an exception or
11 two where I know an individual is just a simple
12 nobody, doesn't have much money. Sometimes I do them
13 for half price, and I don't even tell them that. But
14 I don't do that very often. I tend to be somewhat
15 hard-hearted. But some people plainly don't have any
16 money.

17 Q But even in the case of someone who has no
18 money and for whom you conduct an investigation at
19 half price, does the price vary depending upon the
20 results of the examination?

21 A Oh, absolutely not, no.

22 Q So, specifically with regard to Margaret

1 Williams, the fee you received or are still receiving
2 would be the same regardless of the results of her
3 test?

4 A Absolutely.

5 Q Did there come a time in --

6 MR. GIUFFRA: Do you want to ask him what
7 his hourly fee is?

8 MR. KRAVITZ: You can ask him that when you
9 get to your questions.

10 THE WITNESS: Should I do that now?

11 BY MR. KRAVITZ:

12 Q Why don't you go ahead.

13 A For what I call getting pumped up,
14 formulating the questions, conferring, writing out
15 the questions, saying to the attorney these are the
16 questions, going through that, then later analyzing
17 the charts and writing the letter, \$75 per hour.
18 Face to face with the client is \$125 per hour, and I
19 haven't changed that for about eight years. Given
20 inflation, I think I made a mistake, but that's the
21 way it is.

22 Q To your knowledge, are your rates

1 commensurate with those of others with similar levels
2 of experience to yours?

3 A Probably a little less. They are a little
4 less.

5 Q Did there come a time in 1994 when you were
6 hired by Mr. Dennis to conduct a polygraph
7 examination of Margaret Williams?

8 A Yes.

9 Q When was that?

10 A It was in July, but I can't give you the
11 exact date. It was early July, something like that.

12 Q Early July 1994?

13 A '94.

14 Q What did you learn from Mr. Dennis when he
15 contacted you?

16 A He called me and gave me a general summary
17 of what the issue was. That's always the point of
18 the first discussion with attorneys, and it was
19 typical, what's the issue, because if you can't
20 define an issue, then I can't do a polygraph test.

21 Q What did Mr. Dennis define as the issue?

22 A That he had a client who was accused -- I

1 don't know if he used precisely the word "accused,"
2 but that's what it came to -- accused of removing
3 things that she shouldn't have removed from the
4 office of Vincent Foster, I think it was the precise
5 evening after his body was found when he had
6 committed suicide, that a witness said she had taken
7 them out.

8 Q A witness?

9 A A witness.

10 Q Mr. Dennis told you that a witness had
11 reported that Ms. Williams took materials out of
12 Mr. Foster's office?

13 A Yes, only the most general terms.

14 Q Did you subsequently learn additional
15 information from Mr. Dennis?

16 A He works with another attorney named John
17 Dodds. I can't define his role. I think of him as a
18 detail person. He talked to me more and gave me as
19 much as they had.

20 Q To the best of your recollection, what
21 details did you learn?

22 A Really the details never got a whole lot

1 stronger than that, except clarified the location
2 where the documents were to have been removed from
3 the office of Vincent Foster. It was the evening
4 of -- and I, frankly, have forgotten that date. I
5 can't tell you that date, whatever it was. It is in
6 there.

7 Q Let me show you a copy of your August 1,
8 1994 report and ask you to focus on the first
9 paragraph and see if that refreshes your memory as to
10 the night of the alleged incident.

11 A Well, it doesn't, and I will tell you why.
12 Well, it does up here. Excuse me. I'm looking at
13 the questions. It says the evening of July 20,
14 1993.

15 Q Does that refresh your memory as to what
16 you were told?

17 A Yes. My mind went down to the questions
18 and I made a mistake.

19 Q Let me ask you this: Did you agree to be
20 engaged for this job?

21 A Yes.

22 Q And you agreed to conduct a polygraph

1 examination of Margaret Williams?

2 A Yes, I did.

3 Q When did you conduct the polygraph of
4 Ms. Williams? Again, if you would like to --

5 A I think I can remember that. I think that
6 was July 30th.

7 Q 1994?

8 A 1994.

9 Q What preparation did you do before
10 conducting the polygraph examination of Ms. Williams
11 on July 30, 1994?

12 A I listened to everything that Ed Dennis
13 wanted to say to me, and then I listened to John
14 Dodds and I think John sent me a summary, if I
15 remember correctly. I think he did. Yes, I know he
16 did. I did then what I always do.

17 I did what I always do, I let them say what
18 they want to say. I then look at it and resolve in
19 my own mind what the questions ought to be,
20 because -- and there are many reasons for this --
21 attorneys, I find, want to know the truth.

22 If I gave them an answer they wanted which

30

1 wasn't really credible and reliable, that would be a
2 terrible thing for them as well as me.

3 So what I try to do is I always call it
4 putting the sharpest points on the issue that I
5 possibly can, because I know that very frequently the
6 person being tested then goes on to a government
7 examiner, and for me to do anything but form the
8 sharpest points that I can is to fail in the duty. I
9 have to tell them what really is, not what somebody
10 hopes might be.

11 I can go on at great length, because that
12 is a very crucial issue and it wouldn't matter
13 whether Ed Dennis or -- you name an attorney -- asked
14 me. That's the way it has to be done.

15 Q In other words --

16 A Hardball.

17 Q In other words, you don't want a client to
18 pass an easy test conducted by you and then to fail a
19 harder test conducted by someone working for the
20 prosecutor's office; is that right?

21 A It would be wrong in many ways. Let's put
22 it like that. I only do one kind of test, hardball.

1 Q By "hardball," you mean you make the test
2 as hard to pass as possible?

3 A Not hard to pass, but as pointed and to the
4 point as it possibly can be.

5 Q So if a person is being deceptive --

6 A If someone is accused of a homicide, I
7 don't say did you ever think of shooting your wife.
8 I say are you the one that put those two bullets
9 through her head.

10 Q Your intention is if someone is being
11 deceptive, you want your test to show that; is that
12 right?

13 A Absolutely. That's the point. You can't
14 be nice about it.

15 Q Now, what questions did you formulate as
16 questions that you thought were appropriate to ask
17 Maggie Williams?

18 A Well, those are the questions right there
19 that I ultimately formulated. John Dodds had
20 suggested questions. Some of them are quite similar
21 to that. He is an intelligent young man. He looked
22 at the issues he wanted to know. I rephrased them,

1 put different points on them and so on, but those are
2 questions that met my satisfaction and their
3 satisfaction. I would never do a polygraph test -- I
4 wouldn't go ahead with the test until I said to the
5 attorney now, these are the questions that I think
6 are right, you tell me.

7 If they say no, we don't want you to do
8 that, then we have a falling out, because that's
9 really not the way it goes.

10 But on the other hand, I can't by myself
11 invent the questions and say to the attorneys I'm
12 keeping you in the dark until this is all over. They
13 must know does this meet their needs. You have to
14 have a concurrence of minds.

15 Q Do you know whether Ms. Williams knew what
16 the questions were going to be before you asked them
17 of her during the examination?

18 A Oh, yes, I do know the answer to that. She
19 knew what the issue questions were.

20 Q Now, is that typical?

21 A It is not only typical, it is mandatory.
22 There is a very good reason for it, and I will be

1 happy to give you that.

2 Q What's the reason?

3 A Speaking generally now, leave her out of
4 it.

5 Q Okay.

6 A In any issue, you have a person who may or
7 may not be telling you the truth, and I'm simplifying
8 it a great deal. If you say to the person these are
9 the questions that you are going to have to answer
10 yes or no, if the person reads them and is truly -- I
11 always use the word "innocent"; that's not quite
12 right, but innocent of that act, let's say. What
13 that does is relieves them a great deal. The truth
14 teller, the innocent person looks at it and says
15 that's what it is, they are not going to ask me
16 whether I committed sodomy with my Uncle Shirley.
17 They will ask me about the bank embezzlement.

18 On the other hand, when you tell them those
19 are the questions and they know they did it, those
20 are the questions, that's what you will have to
21 answer, what that does is it answers the emotional
22 responses of the quote, "guilty." It serves a very

34

1 useful purpose. You can't do it by surprise. They
2 have to have an opportunity to know what they are
3 going to deal with.

4 Usually for the truthful, it tends to bring
5 them down off the ceiling because they feel they are
6 going to get a load of buckshot. Well, it isn't. It
7 is a rifle shot.

8 Q So you personally inform the client --

9 A Always.

10 Q -- of the subject of what the questions are
11 before you conduct the examination?

12 A I have them written out on a piece of paper
13 and say there they are, look at them, and so on. It
14 is called figging, in old English.

15 Q If this is not possible, just tell me, but
16 can you tell us in a few minutes exactly how a
17 polygraph examination indicates whether or not
18 someone is being truthful?

19 A Yes, I can. By comparison. It is
20 important, and we all know it, that no two people are
21 alike. So you ask them issue questions, what we just
22 discussed, and we ask them control questions. The

1 issue questions will elicit some emotional response,
2 even in the innocent, because you are asking somebody
3 did you kill Cock Robin and you know you could do 30
4 years for that. That kind of stimulates anybody,
5 even if they didn't do it. But you have to compare
6 that against something.

7 What you do is you contrive control
8 questions which are also designed to elicit emotional
9 responses so that you can compare the emotional
10 responses recorded to these controls against the
11 issue questions, so that you can compare a person
12 against a person. There is no reference point that
13 you can call down and say a 40-year-old white male
14 with a blue necktie ought to respond the following
15 way, no such standards.

16 It is a tiny laboratory experiment within
17 that person. And you tell them, that's what we are
18 doing, and you get kind of a little semi-hostile with
19 them saying this is going to tell the difference, and
20 sometimes they don't like it. You touch them even.
21 That gets them aroused too. That is part of the
22 interview interrogation process. The goal is to

1 recreate as nearly as you can what might occur in a
2 government polygraph room.

3 I can never quite do it in my own polygraph
4 laboratory because it is not the federal building,
5 but I try pretty hard and I say things like just
6 because you pay my bill is not going to help you one
7 bit.

8 Q How are the emotional responses actually
9 recorded?

10 A Chart running by the examiner. Two rubber
11 tubes have a pen that records changes in respiratory
12 action. A blood pressure cuff is attached almost
13 invariably to the left arm, unless you have an obese
14 subject whose veins are too buried. Then I do it
15 with fingers sometimes. That records with another
16 pen what is happening in the cardiovascular system,
17 blood pressure, blood volume, frequency of heartbeat
18 and so on. And then to two fingers, usually the
19 right hand, are electroclips, I will call them, where
20 a very low-voltage current goes in one finger and out
21 the other, so low that no one has ever felt it, and
22 here another pen is recording, depending on how you

1 want to say it, resistance or conductivity, the cell
2 structure of the human body. We don't know why that
3 changes, but we know empirically in stress
4 circumstances it changes. You have four recording
5 pens doing this as the paper rolls by. The examiner
6 with ink is sitting here saying is your first name
7 Ed? That is an irrelevant question. Yes. Is your
8 last name Dennis? Sometimes I make it Eduardo and
9 Donald, change it slightly so they have to think
10 about it. Those are irrelevants to kind of blow off
11 their stress. Then you ask issue questions, are you
12 the guy that shot Cock Robin, you wait for the
13 answer. If he says no, you write minus over here,
14 shows no. You have a control question which you have
15 devised and you ask the control question. You have a
16 sheet of paper about that big. That is one polygraph
17 test, which is a mixture of issue questions, control
18 questions and irrelevant questions. Irrelevant
19 questions are used to wipe off the blackboard so the
20 brain is clear of whatever they have been thinking
21 about.

22 You usually do three or four of those

1 pieces of paper. That gives you research material so
2 you can sit down and reflect on what does this tell
3 me. However, that's the polygraph test over the
4 issues. Before you even do that, you hook the person
5 up and let them sit at rest, just sit there and let
6 the paper run by, and you get in effect a control
7 piece of paper. You can see how fast the heart
8 beats, you can see what their respiratory pattern
9 is.

10 We live in a world of drugs and I'm always
11 conscious of that, and I have them facing so they
12 can't quite see what I'm doing, and I always say to
13 them, I'm not going to ask you any questions, you can
14 sit there. But about two-thirds of the way through,
15 I go like that, and I get responses and I have done
16 that so many years I know what that should produce.

17 Q The record should reflect --

18 A He clapped his hands. That tells me
19 whether the person is drugged. People who are filled
20 with meprobamates, they have a lolled up, drunken
21 look.

22 Q Is the theory of all this that someone's

1 level of stress increases more when he is being
2 deceptive than when he is being truthful?
3 A Yes. With little variations to that.
4 Q In general, is that the theory?
5 A Examiners will talk forever on that
6 subject. Yes. Let me tell you one more thing. I
7 also have them write out a number on a piece of paper
8 and I do a control number test where they -- where I
9 say to them now I'm going to ask you did you choose
10 number -- and I see it. There is nothing tricky
11 about it. 1, 3, 5, 7, 9. You tell me the same thing
12 to that number 5 you wrote down, you tell me no, you
13 didn't write that. It is a control, contrived, lie.
14 It is quite intriguing to see how people respond,
15 even telling a lie that I instructed them to. But
16 what that does for an examiner who takes his time and
17 knows what he is doing, it helps him understand the
18 person that he is dealing with. He saw the responses
19 when you just sat still and did that and he also saw
20 when you did a controlled lie. It gives you a
21 beginning of understanding then. I can go on and on
22 and on.

1 Q When you conduct polygraph examinations, is
2 there anyone in the room other than you and the
3 subject?
4 A No, never. In rare instances I have had a
5 few where the person could not speak English, and
6 then I used an interpreter. I have only done that a
7 few times.
8 Q Except in extraordinary circumstances --
9 A Yes. I do not speak Serbo-Croatian.
10 Q Except in extraordinary circumstances, it
11 is you and the subject in the room alone for however
12 long the test takes?
13 A Yes, correct.
14 Q How long do the tests take on average?
15 A From the time the person arrives until they
16 leave, even in a simple matter, it is about three
17 hours. It takes quite a while to do all the prepare
18 work, because -- the old lady story, we are getting
19 it down to a short letter -- it takes a while to chop
20 out all the underbrush so we are talking about this
21 issue here, so the person who is innocent knows
22 that's all they have to worry about, so that the

1 person who is guilty knows that -- I will put it in
2 English -- oh, they say, I'm up against the wall
3 now. That's why you take all the time, so they can't
4 get their mind somewhere else, you have them focused
5 on that, or off the ceiling.

6 Q You have testified that you conducted a
7 polygraph examination of Margaret Williams on July
8 30, 1994. Did you draft control questions before
9 Ms. Williams arrived in your office that day?

10 A Oh, no, no.

11 Q You drafted them after she arrived?

12 A That's part of the process that we have not
13 discussed. Yes, and I think I have to explain that
14 to you.

15 Q Okay. Why don't we instead of -- since
16 time is going on here, instead of explaining this
17 process in general terms, why don't we just have you
18 go through what happened from the time Ms. Williams
19 arrived at your office on July 30, 1994. Is that a
20 sensible way to go through it?

21 A I do essentially the same thing with
22 everybody.

1 Q Okay.

2 A That's not a problem.

3 Q Who did Ms. Williams come to your office
4 with, if anyone?

5 A She was with Mr. Dennis and her mother.

6 Q And this was at your office in
7 Pennsylvania?

8 A Yes.

9 Q Do you remember what time of day it was?

10 A My recollection is that it was early in the
11 morning. By early, 9:00 or 9:30, something along
12 that line.

13 Q Is it relevant the person's level of
14 fatigue?

15 A Yes.

16 Q So, do you --

17 A I always say come to see me first before
18 the day has bruised you up and we will get your best
19 foot forward. I say that to everyone.

20 Q And so the timing of Ms. Williams's test
21 was consistent with that goal of yours?

22 A Yes.

1 Q What happened after Ms. Williams, her
2 mother and Mr. Dennis arrived at your office?

3 A We all sat around the office and talked in
4 very general terms, as you always do, kind of social
5 terms.

6 Q When you say "we all," are you referring
7 to --

8 A Mr. Dennis, her mother, Ms. Williams and
9 myself. You just have social conversation, I use the
10 phrase, to get them off the ceiling. Because almost
11 everybody who comes to see me doesn't really want to
12 and they are upset and it is not much fun and really
13 comparable to the dentist's office. So I let them
14 realize that it is not as bad as the dentist's
15 office, and in various ways -- I won't bore you with
16 all that.

17 Q Okay.

18 A And then, my recollection is that the
19 pretest interview, which is very important, was done
20 outside the presence of Mr. Dennis and her mother,
21 because I ask searching personal questions, and while
22 Mr. Dennis could retain them in the attorney/client

1 privilege, I did not wish to do that in the presence
2 of her mother.

3 It is more likely to get to open and candid
4 things. So I did a pretest interview, which really
5 isn't tricky, but first my goal is to determine are
6 they a fit subject for the polygraph. Some people
7 aren't, but that is obvious. The mentally
8 disordered, drugged, alcohol, people who just
9 shouldn't be taking the test. So I want to know
10 that. I want to know if they can understand, if they
11 are rational, all that. And then I go through their
12 life history.

13 When I go through their life history, it
14 provides me with knowledge about them as a person
15 from which I derive control questions. They don't
16 know it, but what I'm doing is I'm creating, in
17 effect, the other emotional leverage that matches the
18 issue question, and I make the controls as close to
19 the issue as I can.

20 Q Did you determine whether or not Margaret
21 Williams was a fit subject for polygraph examination?

22 A Yes, I did, but I can't stop at mere yes.

1 She was really upset. Part of my questioning is I
2 ask about health, and basically she said to me, I'm
3 fine physically, but emotionally the newspapers are
4 driving me crazy, all this going on, it has just got
5 me all upset.

6 Q Was she referring to reports that she had
7 removed items from Mr. Foster's office?

8 A That her name was in the papers. I never
9 asked her exactly what they were saying about it.

10 Q But was it related to that --

11 A The Foster issue, yes. She pointed that
12 out to me. She was answering in general terms, and
13 after having finished that, I said now here are the
14 issue questions. I will read them to you. Here's
15 what you are going to be asked. You read these,
16 listen to them and answer me yes or no now.

17 Q She is not hooked up to anything?

18 A She is not hooked up to anything.

19 Q Just sitting in your office with you?

20 A Yes, sitting in my office with me. No, she
21 didn't read them. I read them aloud to her. And you
22 could see she could answer them yes or no very

1 easily. She wasn't worried about splitting
2 infinitives or semantics or anything like that, just
3 straightforward yes or noes.

4 I got an impression -- but that is separate
5 from my opinion -- an impression that by knowing what
6 the issue questions specifically were, it much
7 relieved her and her whole red-faced, upset, "I have
8 been picked on unfairly" kind of attitude seemed to
9 dissipate substantially. But that is often the
10 case.

11 Q I was just going to ask you. It sounds
12 like from your description of your past polygraph
13 experience that oftentimes people who are telling the
14 truth relax once they learn what the questions are
15 that they are going to be asked, whereas people who
16 are not telling the truth sometimes become even more
17 nervous or upset when they learn what questions they
18 are going to have to answer; is that right?

19 A Sometimes dramatically so. I have had them
20 when I read them the question -- I had one customer
21 get up and leave so fast he left his wristwatch. He
22 didn't stay to put his watch back on.

1 Q Was the change in Ms. Williams's emotional
2 state dramatic?

3 A I hate to use the word "dramatic," but it
4 seemed noticeable to me. Because it isn't fair to a
5 person to give them the polygraph test when they are
6 hanging from the ceiling. That is kind of street
7 language, but it conveys they have to get calmed down
8 before you can be fair with them.

9 Q So after Ms. Williams learned what
10 questions she would be asked during the actual
11 examination, she calmed down to a level that you
12 thought was appropriate for her to take the test?

13 A Initially I thought maybe she should go
14 home and sleep another night or something, but that
15 changed her attitude.

16 Q Telling her what the questions were changed
17 her attitude; is that what your testimony is?

18 A Yes.

19 Q Now, at the time that you had that first
20 meeting in your office -- strike that.

21 Was that the first time that you had met
22 personally with Ms. Williams, July 30, 1994?

1 A Yes. I had never seen her before.

2 Q Had you ever spoken with her on the
3 telephone?

4 A Yes.

5 Q You had spoken with her attorneys about
6 this matter?

7 A That's right.

8 Q At the time you met Ms. Williams in your
9 office that day, July 30, 1994, had you finally
10 decided what the questions were that you were going
11 to ask Ms. Williams?

12 A The issue questions?

13 Q Yes.

14 A Yes, they were settled. I had written them
15 out very carefully, and I can't tell you whether we
16 discussed them over the phone before these gentlemen
17 came.

18 Q When you say "we," you mean you and the
19 lawyers?

20 A Whether I discussed them with Mr. Dennis
21 and Mr. Dodds on the phone or whether I showed them
22 when they arrived, I can't recall. But they very

1 promptly approved them. They said yes, that suits
2 us, do it that way.

3 Q What about the control questions? When
4 were those determined?

5 A After everything else was finished and
6 before the polygraph test itself -- before she got
7 hooked up -- began, and I had elicited some life
8 pattern and behavior out of her, relationships,
9 schools, all that sort of thing. I said to her, as I
10 say to everybody else, now you can go and sit on the
11 couch or go to the bathroom, now it is my problem, I
12 have to figure out what all these controls are for
13 you, because I'm going to ask you some things about
14 your personal life that are designed to elicit an
15 emotional response from you. If I were to ask you
16 did you ever steal two pennies' worth of candy when
17 you were four years old, it would be a waste of
18 time. I have to get things that are quite pointy as
19 well.

20 I told her that, but I can't remember what
21 she did. In any case, I took the usual 10 or 15
22 minutes to write out those controls.

1 Q Do you have any record of what the control
2 questions were you asked Ms. Williams?

3 A Yes, I do.

4 Q Do you have those with you?

5 A Yes, but I will answer you in this
6 fashion. I do not wish to show those to you unless
7 compelled because they deal with personal issues in
8 her life designed to embarrass, emotionally arouse
9 her. I reassure people that this is between you and
10 me, but you have to answer it.

11 Q It may be that we should discuss that off
12 the record at some other point. I think at this
13 point why don't we just go ahead without having those
14 questions divulged. If it appears at some later time
15 there is a need for that, we can discuss it.

16 MR. DENNIS: I think that would be wise.

17 BY MR. KRAVITZ:

18 Q How long or approximately how long did this
19 pretest period last?

20 A Somewhere between roughly an hour and an
21 hour and a half, give or take 15 minutes, something
22 like that. I don't think it was two hours.

- 1 Q What happened after this pretest period
2 ended --
3 A When that was over --
4 Q -- after you had drafted the control
5 questions?
6 A After I drafted the controls? Then at that
7 time the actual polygraph test began with no delay.
8 Q In this case did you review the control
9 questions with anyone?
10 A No.
11 Q Is that your general practice, not to?
12 A That's correct, not to.
13 Q And was it just you and Ms. Williams
14 present in your office for the actual polygraph
15 examination?
16 A That's correct, just the two of us.
17 Q How did that examination begin? Do you
18 actually connect the various items to the subject?
19 A Yes. I normally have them sit on the
20 couch. I say come over and sit on the chair. It is
21 a little unique chair with broad arms.
22 Q When you say you normally have them sit on
-

- 1 the couch, it is for the pretest interview?
2 A Yes. We get a nice distinction between
3 talking to me and taking the polygraph test. They
4 sit in the polygraph chair and I attach the device to
5 them.
6 Q What is the purpose for getting that
7 distinction between sitting in the couch for the
8 initial interview and sitting in the chair for the
9 actual examination?
10 A I like the person to know that now we are
11 going to do the test, now we are doing the test.
12 Q So you asked Ms. Williams to move from the
13 couch to the chair; is that correct?
14 A Yes.
15 Q And then you attached the various items
16 that you described earlier?
17 A The two rubber tubes, the blood pressure
18 cuff and the finger clips.
19 Q The rubber tubes that are attached to the
20 trunk of the subject, are those actually attached on
21 the skin?
22 A No. The person is still clothed, of

1 course. What happens is the rubber tube is attached
2 across the front like this and then there is a little
3 chain of metallic balls that go around like this and
4 hook on here so that it is held on tight so when they
5 breathe and expand and contract, this moves the pen
6 over here.

7 Q What happened after you hooked up all of
8 the various tubes and other items to Margaret
9 Williams?

10 A I gave her instructions on how to sit, as I
11 do to every person.

12 Q What instructions are those?

13 A Sit still, put your feet flat on the floor,
14 rest your arms. While the test is going on, don't
15 cough, sneeze, pick your nose, you sit there quietly
16 and look out the window or close your eyes if you
17 need to. You don't have to see anything. Listen to
18 my voice over there. When you hear the question and
19 you are sure he has finished asking the question and
20 you hear all of it, then answer my question
21 truthfully yes or no.

22 Q Where do you sit in relation to the

1 subject?

2 A I have a table over here and my position
3 and chart and the machine's position is such that
4 they cannot see what is going on here. Peripheral
5 vision might catch the forward end of the machine,
6 but they can't see the paper moving, the needle or
7 any of the activity over here. That would be very
8 upsetting if they saw the writings.

9 Q How far did you sit from Ms. Williams
10 during her exam?

11 A The table is about 36 inches wide, and I
12 was seated on the other side of the table.

13 Q So four or five feet away from
14 Ms. Williams?

15 A Yes.

16 Q Except in Ms. Williams's peripheral vision,
17 she was seated in a way that she could not see the
18 machine that you were working?

19 A That's right.

20 Q After you gave Ms. Williams those
21 preliminary instructions, did you begin by asking the
22 issue questions?

1 A No. The first was I said you sit perfectly
2 still, we are just going to let the machine run and
3 see -- I used the word "innards." I always just say
4 let's see how your innards are turning over.

5 Sometimes I say it is a medical term, but you know --

6 Q Do you remember what you said to
7 Ms. Williams?

8 A I said "innards."

9 Q In other words, you just wanted
10 Ms. Williams to sit there for some period of time --

11 A Just to sit there.

12 Q One thing I should have told you at the
13 beginning of the deposition, because the court
14 reporter is taking down everything you and I say, it
15 is easier if we don't talk over each other.
16 Sometimes it is clear you know what my question is
17 before I finish it. If you just would wait until I
18 finish.

19 A I understand.

20 Q What you did is you had Ms. Williams sit
21 there for some period of time without being asked any
22 questions so you could see how she was reacting to

1 just sitting there?

2 A That's correct.

3 Q How long a period of time was that?

4 A I call that about 12 to 14 inches of paper,
5 and that might be one minute.

6 Q What was -- can you describe what was going
7 on physically with Ms. Williams in terms of what was
8 coming out on the paper during that approximately
9 one-minute period?

10 A Relatively routine-looking things.

11 Q Which meant what to you?

12 A Meant that she didn't have any
13 cardiovascular problems. I look for a strange
14 looking heartbeat. Meant that she was breathing
15 normally. That was all right. And that as I would
16 talk to her, the stress just from my voice was
17 causing the needle to go up and down.

18 Q Were you talking to her during that
19 one-minute period?

20 A Well, excuse me. I'm wrong. That was
21 silent. But when I slapped my hand, then strong
22 responses.

1 Q During that one-minute period, you did not
2 speak?

3 A I did not say a word. I misspoke myself.
4 Excuse me.

5 Q What you did was clapped your hand?

6 A Once.

7 Q Ms. Williams's reaction was what?

8 A You could see on the chart that she was --
9 I will call it startled. But what I'm looking for is
10 a genuine startle reaction. That saves being
11 concerned is the subject drugged.

12 Q What did Ms. Williams's reaction to your
13 clapping your hands tell you as to whether
14 Ms. Williams was drugged or not?

15 A I thought she was not.

16 Q You thought she was not drugged?

17 A Not drugged, no. She had not ingested
18 anything to dampen her autonomic nervous system.

19 Q Before Ms. Williams came to your office
20 that day, July 30, 1994, did you ask that she be
21 instructed not to take any medication before coming
22 to your office? Is that something that you do

1 regularly?

2 A I asked either Mr. Dodds or Mr. Dennis, and
3 I can't remember which, was she being treated with
4 any medication. My recollection is nothing of any
5 significance.

6 Q So as far as you know, no medication or
7 drugs or alcohol in any way affected the results of
8 the polygraph examination you gave to Margaret
9 Williams on July 30, 1994; is that correct?

10 A That's correct.

11 Q What happened after this approximately
12 one-minute period of silence other than the clapping
13 of your hands?

14 A Then would be the numbers test.

15 Q Okay. Tell us about that.

16 A Where I hand her a piece of paper and a pen
17 and say write a number between 2 and 10 on the paper
18 out big so we can all see it, just the two of us.
19 She writes that. I hold it up to her face and I say
20 what number did you write. It seems silly. She say,
21 I think in her case it was 4. I don't remember.
22 Very good. So that you remember it, I am going to

1 stick it up here. She doesn't know where I'm going
2 at this point. So you do that for a purpose, in case
3 people have come with assuming in their mind that
4 they are going to get over on you, they say to
5 themselves where is he going with this thing. That's
6 the reason for it. There is another reason.

7 I stick it up where she can see it with
8 post-ems and I say now so you won't forget what it
9 is, there it is stuck. What number did you write
10 down? She repeats it. Then I go through the process
11 of saying to her you tell me no to every one of these
12 numbers that I say to you, tell me no to number 4
13 just the way you did to every other one. Let's see
14 if you can throw this spinner by me. Let's see how
15 well you do. That's kind of poking at them a little
16 bit so as to get their emotional responses up. You
17 don't want to be too nice.

18 Q Now, what happened with Ms. Williams when
19 she said no to the various numbers you stated?

20 A You could see that she was responsive in
21 what I would call a normal fashion, about what you
22 would expect to see, that her responses weren't

1 dampened by anything.

2 Q Did the machines indicate a level of
3 deception when Ms. Williams said no to the number
4 that you had put on the Post-it that was different
5 than what the machine showed when she said no to the
6 other numbers?

7 A Yes. What I'm thinking about is how to
8 answer you without saying too much too soon. But I
9 might as well say it. Her responses to number 4 were
10 really quite strong, really quite strong.

11 Q Showing what?

12 A That she was a responsive person, and when
13 she told a lie, it showed, even to something as
14 meaningless as that.

15 Q In other words --

16 A They acted as something of a control.

17 Q In other words, the test showed -- the
18 machines showed very strongly --

19 A Strongly. Leave out "very." Strongly.

20 Q Showed strongly that Ms. Williams was being
21 deceptive when she said no?

22 A She was being emotionally responsive to the

1 number 4, and that indicates deception.

2 Q That was a different indication than the
3 machines gave when Ms. Williams said no to all of the
4 other numbers you asked her about; is that right?

5 A Yes.

6 Q What did that tell you about Ms. Williams's
7 appropriateness as a subject for a polygraph
8 examination, if anything?

9 A Well, what I was really looking for was to
10 see where she was responsive, and my recollection is
11 that she was responsive here, here and here. I got
12 something most everywhere.

13 Q The record should reflect you are referring
14 to?

15 A I'm sorry. Pneumograph, which is the tubes
16 attached to the chest, blood pressure cuff and GSR,
17 galvanic skin response -- the finger clips.

18 Q What did you do after you did the numbers
19 test.

20 A Then began what we might call the real
21 polygraph test about the issues.

22 Q Did you ask Ms. Williams a series of six

62

1 questions, issues questions?

2 A No. They were intermixed, the issue
3 questions, with other questions -- irrelevant, issue
4 and control, intermixed.

5 Q So there was a series of more than six
6 questions that you asked?

7 A Usually nine, 10 questions for one piece of
8 paper about 16, 18 inches long, which is one test,
9 intermixed.

10 Q I'm confused. You had -- tell me if I'm
11 correct. There were six issues questions that you
12 asked Ms. Williams?

13 A Yes.

14 Q How many control questions were mixed in
15 with those six issues questions?

16 A Within each polygraph test, there were
17 usually two controls, two or three irrelevants.

18 Q So, in other words, what you are saying is
19 each issues question is itself a polygraph test; is
20 that what you are saying? Is what you are saying
21 that there were six polygraph tests here?

22 A No. What I'm saying is that -- this is

1 really language now. I will explain what it is.
2 Let's say test number 1, I would have asked each of
3 these six issue questions before you, starting off
4 with one or two irrelevants and then mixing in an
5 irrelevant and a control at an appropriate space, so
6 all six of those issue questions would be asked and
7 there would be controls inserted and irrelevants
8 inserted to make one polygraph test, by my meaning of
9 the word.

10 Q So each test consists of all six of the
11 issues questions plus some control questions plus
12 some irrelevant questions?

13 A Yes.

14 Q How many polygraph tests, as you have just
15 defined them, did you conduct on Ms. Williams on July
16 30, 1994?

17 A I think I did four of what I'm describing
18 to you, except I remember one was a little shortened
19 because the paper in my machine crinkled funny, so I
20 had to stop and start over again.

21 Q You have described each test -- with the
22 exception of that one you were talking about, you

64

1 described each test as 14 to 16 inches of paper?

2 A Yes.

3 Q How long a period of time is that
4 approximately?

5 A That's 100 to 120 seconds.

6 Q Are the control questions and the
7 irrelevant questions the same for each polygraph
8 examination, or do you change those?

9 A They are changed every time. The issues
10 questions are always the same, but you use fresh
11 controls and fresh irrelevants.

12 Q For each test?

13 A Yes.

14 Q So you have more material to compare her
15 responses on the issues questions to; is that right?

16 A Yes.

17 MR. GIUFFRA: So the record is clear, when
18 you say there are 10 questions that are asked on each
19 one of these tests that you do --

20 MR. KRAVITZ: I don't think he said that.

21 MR. GIUFFRA: Is that right?

22 THE WITNESS: I don't think I said 10, but

1 you might add to 10, because we have six issues,
2 maybe two or three irrelevants and two controls.
3 That would add to 10 or 11.

4 MR. GIUFFRA: Is that your recollection as
5 to what happened in this particular case?

6 THE WITNESS: Yes.

7 BY MR. KRAVITZ:

8 Q Do you remember what any of the irrelevant
9 questions were that you asked Ms. Williams?

10 A No, not clearly. I know what I always ask
11 in the beginning and I can tell you what that is.

12 Q Just what your general practice is.

13 A Let me explain why. The irrelevant
14 question is very useful. The first question you ever
15 ask someone, if you would say to them do you like
16 dessert and they said yes, you would get a response,
17 because that's the first answer to the first
18 question. So you just say is your first name Cindy,
19 or in her case, you wouldn't ask -- the first time
20 you asked -- I have forgotten her first name.

21 MR. DENNIS: Margaret.

22 THE WITNESS: Is your first name Margaret

1 and then is your last name -- so she can answer yes.
2 Then you go through this process.

3 You might start out the next series with is
4 your first name Pauline, is your last name Anderson.
5 So she says no to those.

6 What you are doing is wiping the slate
7 clear so that if the person you are testing is trying
8 to dissimulate, they can't quite follow what the hell
9 you are up to.

10 BY MR. KRAVITZ:

11 Q Do you analyze these four polygraph tests
12 separately and then together as a whole or only as a
13 whole when all four are completed?

14 A The first two charts, that is, fitness,
15 where we look at their innards, as it were, are they
16 drugged, and do they respond to the numbers, I look
17 at them carefully right then and there, because if
18 something really didn't make sense to me, then I
19 would think should I go forward. That tells me
20 should I go forward and what am I going forward
21 with.

22 In let's call them the third, fourth and

1 fifth test, which are issue question tests, true
2 polygraph tests, I watch them flow by to make sure I
3 have asked all the right questions and I am focusing
4 my intellectual capacities on asking the right
5 questions in the right way, but not focusing those
6 capacities on the meaning of what I see. It is just
7 too much to capture in transit.

8 You see it, but you don't form an opinion.

9 Q Is it true that you do all four tests one
10 after another?

11 A Yes. Hardly any interval. I just finish
12 one, stop and say get your breath, pull yourself
13 together, we are going to do the same thing pretty
14 much again, it won't be exactly, but close to it.

15 Q Is it fair to say that the entire testing
16 period for the one minute of near silence and then
17 the numbers test and then the four polygraph tests
18 usually is over within about 10 minutes?

19 A Not over within 10 minutes. There is an
20 accumulated 10 minutes. But after the first one,
21 then I talk to the person a little bit and the next
22 one I have to get up and explain what we are going to

1 do. That might take 10 minutes. I have people when
2 I said lie to me about that number 4 -- I had one
3 after a long discussion say no matter what you are
4 going to say to me, I'm not going to tell a lie.
5 That happens. They are not always that quick.

6 Q The part of the test where you do the four
7 polygraph tests, that usually takes between six and
8 eight minutes, something like that?

9 A Maybe a little more than that, but not
10 far.

11 Q Just in case you need this, I am going to
12 give you a copy of your August 1, 1994 report to
13 Mr. Dennis. Just feel free to refer to it if you
14 need it. My question is what are the six issues
15 questions you asked Margaret Williams in her
16 polygraph examination.

17 A There are five questions.

18 Q Okay. I misspoke.

19 A I think perhaps I did as well. I was just
20 doing it from memory. It is my fault. Number 1 on
21 the paper is "did you remove any documents from
22 Foster's office that night?"

1 "Answer: No.

2 "To your personal knowledge, did anyone
3 remove documents from Foster's office that night?

4 "Answer: No.

5 Q That was the second question; right?

6 A Yes. Third, "did you discuss removing any
7 documents, excepting a suicide note, from Foster's
8 office that night?

9 "Answer: No."

10 Fourth, "were you aware that night of
11 others discussing document removal, excepting a
12 suicide note?

13 "Answer: No.

14 Fifth, "do you now know of anyone removing
15 documents from Foster's office that night?

16 "Answer: No."

17 And sixth, "excepting a suicide note, do
18 you now know of any discussion by anyone about
19 removal of documents from Foster's office that
20 night?

21 "No."

22 Q Were Ms. Williams's answers to all six of

70

1 those questions the same, that is, no, each of the
2 four times you asked her those questions?

3 A Always the same to what is written down
4 here.

5 Q Now, how did Ms. Williams know that you
6 were referring to the night of July 20, 1993 in light
7 of the fact that these questions refer simply to
8 "that night"?

9 A Because I told her so. I said when I say
10 "that night" to you, it means the night of July
11 whatever it was.

12 Q July 20, 1993.

13 A July 20, 1993. That's the night we are
14 talking about.

15 Q Why did you choose to refer in the question
16 simply to "that night" rather than the night of July
17 20, 1993?

18 A In my opinion, it is more emotionally
19 penetrative to say "that night" rather than give some
20 numbers.

21 Q So, in other words, you devised the
22 questions with the intention of getting the most

1 accurate emotional response?

2 A I wanted every little emotional response
3 that she had to give over these.

4 Q And then did you analyze Ms. Williams's
5 emotional responses to her various answers and to
6 your questions?

7 A Yes, I did.

8 Q When was that done? Was that done after
9 Ms. Williams was unhooked and had left the room or
10 while she was still there?

11 A She was unhooked --

12 Q Maybe just to make this a little bit less
13 confusing, what happened after you went through the
14 four polygraph tests you have described?

15 A I told her she was finished and then asked
16 her -- I told her I was not going to have a
17 conclusion right then and there. I said now, ask me
18 any questions you want to about what's going on. It
19 is very important because sometimes people have
20 something that they want to tell you and they put it
21 in the form of a question. So I just simply opened
22 the door. My recollection is she didn't have any

1 questions. She seemed ready, that was okay with her,
2 she was finished.

3 Q Then did you analyze the charts?

4 A I visited briefly with Mr. Dennis, her
5 mother and with her, took them back to their -- I
6 think I took them back to their car, because my place
7 is hard to find. I had to take them back to their
8 car. And they left.

9 My recollection is that was roughly
10 lunchtime, and I believe I had lunch, put it entirely
11 out of my mind. May I continue?

12 Q Sure.

13 A It is important to separate yourself from
14 the persona so that you can go back to the papers,
15 leaving out -- because people have personalities, and
16 you say, paper, what do you tell me. So about an
17 hour, an hour and a half later I looked at the
18 papers.

19 Q What did you see when you looked at the
20 papers?

21 A After going over them and over them and
22 over them, it doesn't take all that long, an hour

1 maybe, maybe a little less, it seemed clear to me
2 that her responses to controls in a number of
3 instances were clearly stronger than to the issue
4 questions.

5 Q What did that tell you?

6 A That told me that she was more concerned
7 about the controls that I had asked her about than
8 she was about the issue at hand, that her emotional
9 responses were larger.

10 Q And what did that tell you, if anything,
11 about whether Ms. Williams was being truthful with
12 regard to her answers to the issues questions?

13 A From that I concluded that she was not
14 deceptive when she answered the issue questions as
15 she did.

16 Q Were there any issues questions to which
17 Ms. Williams's answers appeared deceptive?

18 A No.

19 Q Were Ms. Williams's answers, in your
20 opinion, truthful or not deceptive as to all six of
21 the issues questions all four times they were asked?

22 THE WITNESS: Would you please read me that

1 question.

2 (The reporter read the record as requested.)

3 THE WITNESS: Truthful, yes.

4 BY MR. KRAVITZ:

5 Q I'm just going to read into the record the
6 bottom paragraph of your August 1, 1994 letter to
7 Mr. Dennis, your report. Actually, the bottom
8 paragraph of the first page, if you don't have a
9 problem with that.

10 MR. DENNIS: I don't have a problem with
11 that.

12 MR. KRAVITZ: Let's take a five-minute
13 break.

14 (Recess.)

15 MR. KRAVITZ: Let's go back on the record.

16 BY MR. KRAVITZ:

17 Q I'm going to just read into the record the
18 bottom paragraph on the first page of your two-page
19 report, and it reads "prior to this question process,
20 I told Williams that 'document' was to include
21 writings and papers of any sort, including a suicide
22 note. I also told her 'remove' meant documents found

1 in and taken from Foster's office of any sort and for
2 any purpose but did not include such things as papers
3 which may have been in her purse and were carried in
4 and then out by her. Further, that for her to 'know'
5 it would be necessary that she had done or witnessed
6 the act or statement personally or have learned of it
7 directly from a participant, that 'know' did not mean
8 knowledge gained from news media, nonparticipants or
9 another hearsay source. She told me she understood
10 and would answer accordingly."

11 Is that what you wrote in your report to
12 Mr. Dennis?

13 A Yes.

14 Q And just so the record is clear, that
15 paragraph in your report came directly after the list
16 of six issues questions that you asked Ms. Williams;
17 is that right?

18 A That's correct.

19 Q Now, did Ms. Williams tell you at any point
20 that day that she carried a purse out of Mr. Foster's
21 office on the night of July 20, 1993?

22 A I don't think so. That was my saying to

1 her if that was the case, what you brought in and
2 took out in your purse. That was my way of defining
3 terms.

4 Q In other words, you didn't want to confuse
5 her reactions by having any confusion as to whether
6 your question referred to something that she might
7 have brought in with her and then brought out when
8 she left; is that right?

9 A Yes. I have found at times people split
10 hairs and get themselves confused.

11 Q Now, your report on the second page states
12 "each of the issue questions was asked of Williams
13 at least three times in the process."

14 You have testified earlier that it is your
15 general practice to ask issue questions four times;
16 is that right?

17 A If I said that, I misspoke myself.

18 Q I may have mischaracterized the testimony.

19 A Three would be my practice.

20 Q Do you remember how many times you asked
21 Ms. Williams the issues questions?

22 A I think three each, yes.

1 Q I have to apologize in advance for asking a
2 question that is probably going to be poorly formed.
3 Let me do the best I can.

4 It has always been my lay understanding of
5 polygraph examinations that it is more likely for
6 people who are, in fact, telling the truth to show up
7 as being deceptive on examinations than it is for
8 people who are, in fact, being deceptive to show up
9 as being truthful in polygraph examinations.

10 Is that in your experience -- do you have
11 an opinion as to that issue?

12 A I have never heard it expressed that way,
13 nor have I ever thought that way.

14 Q After you analyzed the charts that were
15 created during Ms. Williams's polygraph examination
16 on July 30, 1994, did you write a report?

17 A Yes.

18 Q Are these two pages that I have been
19 reading from a copy of the report that you sent to
20 Mr. Dennis?

21 A The answer is yes, that is my personal copy
22 that you are reading from.

1 Q And this copy that I'm reading from, your
2 personal copy, is not signed; is that right?

3 A No. I retained that in files for
4 reference.

5 Q Is there a signed copy that has been
6 provided to Mr. Dennis?

7 A Whatever the date is on there, the letter
8 left and reached him in the mail.

9 Q The date is August 1, 1994.

10 A That sounds correct.

11 Q The answer is that you would have signed
12 your report as a letter?

13 A As a letter, absolutely.

14 Q To Mr. Dennis?

15 A Yes, just the way it is addressed there.

16 Q And the record should reflect that
17 Mr. Dennis has requested -- well, has allowed us to
18 see this copy of Mr. Anderson's report and has asked
19 us not to make it an exhibit to the deposition, and I
20 see no reason to deny that request.

21 MR. DENNIS: Thank you.

22 MR. KRAVITZ: That's the approach we are

1 going to take, unless Mr. Giuffra has any problem
2 with it. He is shaking his head that he does not
3 have a problem.

4 BY MR. KRAVITZ:

5 Q Did you ever become aware that Ms. Williams
6 later took a second polygraph examination?

7 A I did later learn.

8 Q How did you learn that?

9 A Mr. Dodds, I believe, called and told me
10 that not very long ago.

11 Q Have you had any direct contact with
12 Margaret Williams since July 30, 1994 when she was at
13 your office?

14 A I came through her office today and said
15 hello to her, and that was about it.

16 Q You came --

17 A Her office here.

18 Q Over at the White House?

19 A Yes. That's where I met Mr. Dennis.
20 That's the reason I saw her, as far as I know.

21 Q But you weren't at the White House to meet
22 with Ms. Williams?

80

1 A No. We had no business discussion.

2 Q You were there to meet up with Mr. Dennis;
3 is that right?

4 A That's correct.

5 Q Who happened to be at the White House
6 meeting with Ms. Williams?

7 A I think he tried to figure out somewhere
8 where we could meet.

9 MR. DENNIS: I arrived for the meeting
10 there.

11 BY MR. KRAVITZ:

12 Q Except for your chance meeting with
13 Margaret Williams here at the White House when you
14 were meeting up with Mr. Dennis, have you had any
15 direct contact with her since July 30, 1994?

16 A None whatsoever.

17 Q Since you wrote your report on August 1,
18 1994 relating to the examination you conducted on
19 July 30, 1994, have you done any work regarding
20 Margaret Williams?

21 A Nothing.

22 Q What do you know about the subsequent

1 polygraph examination Ms. Williams was given by a
2 person working under the auspices of the office of
3 independent counsel?

4 A All hearsay.

5 Q What do you know about it?

6 A That she took another test, that it was
7 given by a polygraph examiner who is employed by the
8 FBI and that she passed it. That's all.

9 Q Do you know the name of the FBI
10 polygrapher?

11 A No one ever told me a name. No.

12 Q Is that all you know about the second test?

13 A That is all I know.

14 Q Does the fact that Ms. Williams has passed
15 two polygraph tests on the same subject mean anything
16 to you as an expert polygraph examiner?

17 A I am satisfied that she answered me
18 truthfully in my test.

19 Q And you are satisfied regardless of what
20 happened in the second test?

21 A The second test doesn't surprise me. I
22 would have expected that.

1 Q In your expert opinion, does the fact that
2 a subject has passed a second polygraph test under
3 different circumstances in a different environment
4 given by someone not hired by her own lawyer, does
5 that corroborate -- and the test has resulted in the
6 same finding, that is, truthfulness -- does that
7 corroborate your findings, in your opinion?

8 MR. GIUFFRA: I will object to the form of
9 that one. That is the worst one you have ever
10 phrased.

11 BY MR. KRAVITZ:

12 Q If you can understand it.

13 A I would phrase it a little differently. I
14 think the test I gave was predictive of what a
15 polygraph test would show in the future. That's what
16 I expected. I think the men in the FBI now do
17 excellent work, but I have no other knowledge than
18 that.

19 MR. KRAVITZ: Just for the record, I can
20 tell you that is not the worst question I have ever
21 asked.

22 MR. DENNIS: I'm sure there are some out

1 there that you would be --

2 MR. GIUFFRA: This is the worst one I have
3 ever heard about.

4 MR. KRAVITZ: Let me take one minute and
5 look through my notes and see if there are any big
6 areas I missed.

7 MR. GIUFFRA: We will put you under a lie
8 detector test.

9 (Pause.)

10 MR. KRAVITZ: I think that is all I have.
11 Thank you.

12 EXAMINATION

13 BY MR. GIUFFRA:

14 Q Mr. Anderson, my name is Robert Giuffra --

15 A Please spell your last name.

16 Q G-i-u-f-f-r-a.

17 A Thank you.

18 Q I am counsel to the majority. I will just
19 be asking you a number of questions. The first
20 question I have is with regard to the lie detector
21 test that the FBI subsequently administered to
22 Ms. Williams, do you know whether the same questions

84

1 were used as you put to Ms. Williams on July 30,
2 1994?

3 A No, I don't know the answer to that
4 question.

5 Q Would you have expected the same questions
6 to be used?

7 A I will postulate for you. Had her counsel
8 said to me so-and-so is going to happen, how should
9 it be done, I would say the best way to do it would
10 be to repeat the questions. But no one ever
11 discussed it with me.

12 Q Do you have any knowledge as to whether the
13 same questions were used?

14 A No. I have no idea.

15 Q You did give Mr. Dennis a copy of your
16 report prior to the time when she took the --

17 A He had that report roughly a year ago.

18 Q Have you ever done any work for any of
19 Mr. Dennis's clients in the past?

20 A No. This is the first time.

21 Q What is the total amount of compensation
22 you have received from Ms. Williams for the work you

1 have provided so far?

2 A It is hard to be certain. I am going to
3 guess 6- or \$700, something like that.

4 MR. DENNIS: I thought it was somewhat less
5 than that, but that is a ballpark figure.

6 THE WITNESS: I would rely on your
7 records. I can look it up, but it was somewhere in
8 that range.

9 MR. DENNIS: I can find out and give you
10 the precise amount.

11 BY MR. GIUFFRA:

12 Q Are you familiar with some of the so-called
13 countermeasures that people can take in order to pass
14 a lie detector test?

15 A I have heard lots of discussion about it,
16 yes.

17 Q Could you just please state for the record
18 your understanding of some of the countermeasures
19 that people sometimes use to pass a lie detector test
20 when they are lying?

21 A I have to say to you that we are really in
22 the hearsay area now. I have read about it. I have

86

1 heard other people talk about it. The most common
2 one is the thumb tack in the shoe routine, taking
3 drugs and so on.

4 Q Can biting one's tongue, for example, be a
5 countermeasure that might sometimes be used?

6 A All I can say to you is that people can say
7 anything and say that is a countermeasure.

8 MR. GIUFFRA: Can we just take a break for
9 one second?

10 (Recess.)

11 MR. GIUFFRA: What was the last question
12 and answer?

13 (The reporter read the record as requested.)

14 BY MR. GIUFFRA:

15 Q Mr. Anderson, do you know whether biting
16 one's tongue is a countermeasure that is sometimes
17 used to defeat the objectives of a lie detector
18 test?

19 A As to whether it is sometimes used, I don't
20 know. I just don't know about that. I have heard
21 about that. But knowing in my mind, I can't say that
22 I have had any personal experience with that.

1 Q Do you know whether anyone can defeat the
2 purposes of a lie detector test by pressing one's
3 toes against the ground or pressing one's toes
4 together?

5 A I do not believe so.

6 Q Is it possible for a person to control
7 their physiological responses to control questions
8 by, for example, biting one's tongue or pinching
9 oneself?

10 A I don't think so, but I can cite an example
11 of the limited experience I have had in that, if you
12 wish.

13 Q Sure. Please state on the record what
14 experience you have. Let me just ask you -- go
15 ahead.

16 A Years ago I was in Youngstown, Ohio, and
17 the agents there had just arrested a fellow named
18 Willie Napoli, who was what we call a biofugitive.
19 They had had a bank robbery. They said to him,
20 Willie, you did that bank robbery, and he said no, he
21 didn't. He was a very experienced criminal. Will
22 you take the polygraph? Yes, I will. I was there,

1 and I said, Willie, are you ready to go, and he said
2 I'm going to beat the machine, I'm going to beat the
3 machine.

4 I said, well, for my education, tell me how
5 you are going to do it. He said I did it once in
6 prison, but I can do it again. I said how will you
7 do you that? He said I will focus my mind very, very
8 hard on something different and when you are asking
9 me questions I will think as hard as I can about
10 something different and you won't know what's going
11 on.

12 I said to him, Willie, you know, I think
13 that I have heard your reputation, that you are quite
14 a ladies' man, and he said yes, that's true, I am. I
15 said, Willie, tell me something, after about -- I
16 have to clean up my language for the reporter -- I
17 said after a certain length of time and you try to
18 focus your mind on something else so that you can
19 prolong the pleasure, how does that work? And he
20 looked at me for a while and began to laugh and said
21 not very well. Let's just roll with the polygraph.

22 That's about the level of countermeasure

1 experience that I have had.

2 Q So it would be your testimony that your
3 machine does not have any sensors to detect physical
4 countermeasures that someone might be able to engage
5 in?

6 A Are you asking me about the machine itself
7 or the process?

8 Q Does your process -- strike that.
9 The machine itself.

10 A In answer to the machine itself, no.

11 Q Does the process that you use to take a lie
12 detector test include any measures to prevent a
13 person from engaging in physical countermeasures, for
14 example, such as biting their tongue during the
15 period of the control questions?

16 A Yes. I move so quickly and so changeably
17 that they can't tell what I'm going to do next.

18 Q But you don't have any -- for example, you
19 don't have any electrodes on the person's foot or
20 cheek to see they are not biting their tongue?

21 A I have at times had people take their shoes
22 off when I thought they were going to be cute. I

90

1 will just say take your shoes off and do this in your
2 bare feet. I never saw a thumb tack.

3 But the process that I use is designed to
4 move in such a changeable and swift fashion that they
5 can't, like a batter, tell whether it is going to be
6 high and on the inside or right down the center.
7 They don't know what to do.

8 Q You don't take any specific steps to ensure
9 against countermeasures?

10 A I consider what I told you a specific
11 step.

12 Q Moving quickly during the course of the
13 examination?

14 A Yes. That's the very nature of the
15 process. I understand what you are asking me, and I
16 think it is an important question. That's the best
17 way that you can on a regular basis deal with that
18 speculative possibility.

19 Q Did you have any understanding as to the
20 purpose that the test you were taking of Ms. Williams
21 would be put to?

22 A What would be the results?

1 Q No. Did you have an understanding as to
2 how they would be used?

3 A I had no idea.

4 Q Did you discuss with anyone whether the
5 results of your exam would be disclosed to the
6 independent counsel?

7 A What I'm trying to think is I wasn't even
8 aware there was an independent counsel then.

9 Q Do you know whether the results of your
10 examination have been disclosed to the independent
11 counsel?

12 A Do I know whether they have been?

13 Q As you sit here today?

14 A I think they have been.

15 Q What is the basis of your understanding
16 that the results have been disclosed?

17 A I think Mr. Dennis told me that. I think
18 your question was did I know it was going to happen
19 when I gave the test. No.

20 Q What was your understanding as to why
21 Mr. Dennis asked you to conduct a polygraph
22 examination of Ms. Williams?

1 A So he would know whether she was telling
2 him the truth. That's phase 1. Let me think if
3 there is anything more.

4 (Pause.)

5 I can't remember anything more. Attorneys
6 often don't tell me what they are going to do with
7 the results.

8 Q Did Mr. Dennis advise you as to why he
9 wanted to know whether Ms. Williams would pass a
10 polygraph test that you would administer?

11 A My recollection is that there was some
12 conflict where some witness had said she carried
13 documents out of there and something was going to
14 happen because of that.

15 Q I believe you testified that sometimes
16 lawyers will ask you to conduct a test prior to the
17 conduct of a test by the FBI; is that correct?

18 A Yes.

19 Q Did Mr. Dennis ask you to conduct this test
20 prior to a test being conducted by the FBI?

21 A I don't think we discussed that at all. We
22 might have, but I can't recall that at all. I

1 wouldn't rule it out, but I don't think that
2 happened.

3 Q Why would a lawyer want you to perform a
4 test prior to a test being conducted by the FBI?

5 A In the cases that I was citing to you, they
6 are trying to decide whether or not to make a deal
7 with the prosecutor. If they think that their client
8 could pass a government polygraph test, they say to
9 the prosecutor my client is willing to take your
10 polygraph test. And may I continue on that?

11 Q Sure.

12 A At times I have been sent to the District
13 Attorney's office and sat down with his examiner over
14 things like that.

15 Q Does the fact that someone has taken a
16 polygraph test affect the likelihood that they will
17 get the same results on a future test?

18 A I think in theory that's possible.
19 However, I would like to point out to you that taking
20 a polygraph test in my office, which is in a
21 relatively benign and quiet part of the world,
22 doesn't compare with taking one from a government

1 examiner in a federal building under federal building
2 auspices. That usually has a -- frightening is not
3 quite the word, but it might do for the point -- a
4 chilling effect upon the person taking the exam.

5 Q Do you have any understanding as to whether
6 a person can acclimate themselves to an untrue fact
7 over time?

8 A May I respond by saying that's a question
9 that I have been dealing with for 20 years. That's
10 street language, can a person get to believe his own
11 bullshit. I think that's what it comes to.

12 Q What is your view of that question?

13 A If nobody minds, I'm going to take a little
14 time on that one, because that's the heart of what
15 you are really talking about. My wife is a doctor of
16 psychology, and I said to her, you go to the
17 reference works of the American Psychological
18 Association, ask them to send you every paper that
19 has ever been written on the subject of denial, I
20 would like to read all those papers to inform myself
21 about that problem, how well people can exercise
22 denial.

1 The response was that there are no such
2 papers. The American Psychological Association
3 doesn't really offer us any help in that area. My
4 experience would indicate that if we are dealing with
5 something which is relatively minor, the issue,
6 playing poker for matches, that denial may not be
7 much of a problem, that it is possible that you don't
8 care enough.

9 On the other hand, if you are dealing with
10 an issue or issues which have real substance, meaning
11 and later consequences for you of some magnitude,
12 denial is virtually impossible.

13 Q Doesn't the fact that someone has passed a
14 lie detector test make it more likely that they will
15 pass a subsequent lie detector test?

16 A Your question is in the abstract, so I will
17 answer in the abstract. In the abstract, if two
18 qualified examiners give the same person a comparable
19 test, the likelihood is very high if they passed the
20 first one that they would pass the second one because
21 they were doing the same thing both times under the
22 same circumstances and auspices.

1 Q Are you aware of any instances in which
2 people -- strike that.

3 Can someone take a practice test with
4 someone such as yourself who is a private polygraph
5 examiner, pass those tests or develop techniques to
6 pass those tests and then go and take an FBI test?

7 A Doesn't that contain the presumption that
8 the test I gave gave an erroneous result?

9 Q I'm just ask whether it is possible for
10 someone to do that.

11 A But I have to understand your question in
12 order to answer it. It is my belief that your
13 question is in itself defeating, because it presumes
14 that the test that I would have given was an
15 erroneous result.

16 Q Are you aware of any studies indicating
17 that training and practice tests increase the
18 likelihood that someone will be able to pass a lie
19 detector test when --

20 A I'm sure there must be studies that
21 indicate that. I haven't read that.

22 Q Why are you sure there may be such studies?

1 A There are studies on that sort of thing
2 frequently done, and I don't read everything that is
3 produced.

4 Q Do you have any knowledge of such studies?

5 A I consider the authoritative source the
6 journal for the American Polygraph Association. I
7 get it every month, now quarterly. I can't remember
8 seeing one in the APA journal. It may have
9 occurred.

10 Q Does a person's memory affect the results
11 of a polygraph test?

12 A Memory has a lot to do with it.

13 Q So that if someone does not have a good
14 memory of the events in question, they are more
15 likely to obtain a result that they -- a truthful
16 result on the test?

17 A I think if a person does not remember what
18 happened, the polygraph will not enhance the memory.
19 It is gone. If the memory is gone, the polygraph
20 wouldn't show deception.

21 Q So that if someone -- if their memory of
22 certain events was weak, they are more likely to be

1 able to pass a lie detector test by giving false
2 answers?

3 A If a person does not remember what
4 happened, they would pass the test.

5 Q Does the reliability of a polygraph
6 examination decrease as time elapses between the
7 events in question and the test?

8 A Another meaningful question. I know from
9 experience in a homicide case that I touched on
10 earlier that it did not over eight years.

11 Q So would it be your testimony that the
12 elapse of time between the event and the test would
13 have no significance?

14 A I think it could have significance if the
15 event was, as alluded to earlier, an event of lesser
16 or minor magnitude. I'm speaking in theory.

17 Q You indicated that when you spoke to
18 Ms. Williams during the pre-session, she was very
19 upset about the events surrounding Mr. Foster's
20 death; is that correct?

21 A More precisely about the kind of what I
22 gather to be thunder and lightning over her head.

1 She didn't put it in terms of her feelings about
2 someone else. She was talking about her feelings
3 about herself.

4 Q Did Ms. Williams explain to you that she
5 was upset on the night of Mr. Foster's death?

6 A She said she was.

7 Q Can a person's memory be affected by their
8 mental state at the time of the events in question?

9 A I think you are asking me a question that
10 goes beyond my competence there. All I can give you
11 there is a curbstone opinion. I am not an expert in
12 obliteration of memory.

13 Q Do you know whether the results of
14 polygraph testing are generally admissible in federal
15 court?

16 A In some circuits, at least one, I believe
17 polygraph tests have now become admissible under
18 somewhat tortuous circumstances. I'm trying to
19 define them for you.

20 If a defendant says -- the Atlanta circuit
21 is the one I'm thinking about.

22 MR. KRAVITZ: The 11th Circuit?

100

1 THE WITNESS: The 11th Circuit. If the
2 defendant says to the prosecutor, you have the wrong
3 person, I want a polygraph test, and the prosecutor
4 says no, thanks, we are not interested, I think the
5 11th Circuit says that's a problem. Now, I leave
6 that to you gentlemen of the bar to explain better,
7 but something like that exists.

8 BY MR. GIUFFRA:

9 Q Other than the 11th Circuit and in this
10 particular instance, are polygraph tests generally
11 admissible in court?

12 A They are generally inadmissible.

13 Q Why are they generally inadmissible in
14 federal court?

15 MR. KRAVITZ: You are asking him for a
16 legal conclusion?

17 BY MR. GIUFFRA:

18 Q Your understanding as to why polygraph
19 tests are generally inadmissible in federal court.

20 A Because the Superior Courts have so ruled
21 is the best thing I can tell you from my knowledge.

22 Q Do you have any understanding as to the

1 error rate for polygraph tests?

2 A What are we talking about when you say
3 "error rate"?

4 Q The rate at which the test indicates that
5 someone is providing a truthful answer when they are
6 providing a false answer.

7 A I can't cite the numbers to you, but there
8 is a significant error rate.

9 Q You have no knowledge as to the --

10 A I can't with any reliability tell you, but
11 it can't be overlooked.

12 Q So it would be your testimony that
13 polygraphs are not infallible?

14 A The polygraph process is not infallible.
15 The device itself probably is infallible, but the
16 process really depends upon the competence and
17 ethical nature of the examiner.

18 Q Are you aware of any instances in which you
19 have made an erroneous conclusion with regard to a
20 polygraph examination?

21 A Not specifically where I know for sure, but
22 I have several where I have brooded about them, and I

1 am not at all sure I had it right.

2 Q Is it correct that the FBI --

3 MR. KRAVITZ: He hasn't finished his
4 answer.

5 THE WITNESS: In each of those instances,
6 when I said that someone is not lying, that they are
7 telling the truth, that is, when I gave somebody a
8 pass and I later thought about it and said to myself
9 I think that one got by me, and I can think of
10 several like that. And I might also point out to you
11 that in that area we must consider that you don't
12 always have to give an opinion. Sometimes you don't
13 know and you say I don't know.

14 BY MR. GIUFFRA:

15 Q I believe you testified earlier that the
16 FBI stopped polygraph testing for some time in the
17 1960s; is that correct?

18 A Yes, I did.

19 Q Do you know why the FBI stopped
20 polygraph --

21 A J. Edgar Hoover said no more polygraphs.

22 Q Do you know why he said no more polygraphs?

1 A No.

2 Q The FBI now has resumed conducting
3 polygraphs?

4 A Long since, beginning in '72, I think.

5 Q It would be your testimony that you are not
6 familiar with any studies with regard to the accuracy
7 of polygraph tests?

8 A Not familiar with them that I recall them.
9 I realize they exist, but I can't replay them for
10 you.

11 Q The questions that you asked Ms. Williams
12 all concerned events that took place on the night of
13 Mr. Foster's death; is that correct?

14 A Yes.

15 Q Did you ever discuss with anyone asking
16 Ms. Williams questions about other events bearing on
17 the documents in Mr. Foster's office?

18 A No, I never did.

19 Q Did you ever have any discussion about
20 conducting a test with regard to events that occurred
21 on July 22nd, two days later?

22 A No.

1 Q Did you ever discuss with anyone that
2 issues were raised surrounding events that occurred
3 on July 22nd?

4 A I'm remembering the date of his suicide as
5 the 20th.

6 Q Correct.

7 A You are talking about two days later. No.

8 Q Your focus was solely on the events that
9 occurred on July 20, 1993?

10 A That's correct.

11 Q Did you ask -- you did not ask Ms. Williams
12 whether she carried any files from the counsel's
13 office suite on the night of Mr. Foster's death?

14 A I think I did. I didn't use the language
15 that you are offering. Where is the letter there?
16 Take a look at the bottom of that.

17 Q Did you have any discussion with anyone as
18 to the layout of the counsel's suite in the west wing
19 where Mr. Foster's office was located, the physical
20 layout of the suite?

21 A The physical layout? No. I just had words
22 that said Foster's office, really general terms.

1 Q By "Foster's office," did you have any
2 understanding as to whether that meant the office
3 where his desk was located or did that mean the
4 entire counsel's suite?

5 A I took it to mean everything within his
6 control.

7 Q Meaning his personal office?

8 A His -- whatever would be considered his
9 office, that is, where he sat, his secretary, his
10 files, that sort of thing. I was thinking in terms
11 of control, not where he sat down.

12 Q Did you have that understanding with
13 Ms. Williams when she took the test?

14 A I used language precisely what you see
15 there.

16 Q It says here "Foster's office." It doesn't
17 say the counsel's office suite.

18 A The words that are written there are
19 precisely the words I used, and I know better if they
20 are not the correct words. Those are the words I
21 used.

22 Q So if Ms. Williams had removed files from

1 the counsel's office suite rather than Mr. Foster's
2 office, that would not be caught by the test?

3 A I don't see how I can give an honest answer
4 to that. I did not define to her what "Foster's
5 office" meant.

6 Q And your test did not examine whether
7 Ms. Williams removed any documents from Mr. Foster's
8 office on any other date subsequent to his death?

9 A No, no.

10 Q Do you attempt to conduct a polygraph
11 examination in the same manner in which the FBI
12 conducts a polygraph examination?

13 A Generally, yes, as near as I can.

14 Q You attempt to replicate the FBI's
15 procedures in your office?

16 A Yes.

17 Q Do you ever attend conferences or meet with
18 FBI agents to learn sort of what the state of the art
19 in polygraphy is?

20 A I talk with them from time to time, yes.

21 Q Do you have any quality controls in your
22 office to assure the accuracy of your polygraphy

1 results?

2 A Certainly. Me.

3 Q What type of machine do you use to
4 conduct --

5 A Stoelting, S-t-o-e-l-t-i-n-g. Ultra
6 Scribe, four pens.

7 Q Is that considered a state of the art
8 polygraphy machine?

9 A Yes. That's what they advertise it as.

10 Q I believe you testified before that
11 Ms. Williams came to the test with her mother and
12 Mr. Dennis; is that correct?

13 A Yes.

14 Q I believe you indicated that she seemed
15 somewhat fatigued when she arrived on the morning of
16 the examination?

17 A I don't know that I used the word
18 "fatigued." I thought maybe filled with anxiety.

19 Q If someone was filled with anxiety, would
20 that affect the accuracy of the polygraphy
21 examination?

22 A Well, the point of that comment was that

1 was visible anxiety. If she were -- and I use my own
2 loose language for it -- if she were still hanging
3 from the ceiling and couldn't get herself pulled
4 together, I wouldn't have done the test.

5 Q It would be your testimony that she did
6 pull herself together by the time that you conducted
7 the polygraph?

8 A Yes, she seemed to to me, by my gross
9 visual observations.

10 Q Could you just describe a little bit more
11 for the record how control questions work. What use
12 do you make of control questions?

13 A I'm trying to think of which example to
14 give you. I think I will use a couple general terms
15 and then give you a specific example. Would that
16 suit?

17 Q Sure.

18 A You have to use a control which is in the
19 same general parameters as the crime. If a person is
20 accused or suspected of embezzlement, the control
21 would have to relate to something like embezzlement.
22 You couldn't use a control about have you been having

1 sexual relations with some woman other than your
2 wife. The controls have to be in the same general
3 area. And they have to be reasonably likely to be
4 something that the person either would lie to or
5 would provoke a profound or significant or comparable
6 emotional response, comparable to what you might
7 expect in the offense itself.

8 Those are the generalities.

9 Q So it would be your testimony that the
10 control questions, for example, cause more shock than
11 the issue questions in the examination?

12 A No. "More" is not what I said at all.
13 They ought to be comparable.

14 Q If they caused more shock than the issue
15 questions, the examination would not be accurate?

16 A Well, let's see if I can say that one to
17 you. If a person is suspected of stealing \$15,000
18 from the vault cash in a bank and you use as controls
19 before the age of 18 did you ever take as much as \$20
20 from your father's wallet, and they said no, and you
21 got a stronger response to the father's wallet than
22 you did to the \$15,000 in the bank vault cash, then

110

1 you could, I think, logically conclude or infer that
2 he was telling something that was true about the
3 vault cash, that he denied taking it.

4 Q So, it would be your testimony that the
5 phrasing of the control questions, though, is
6 critical in terms of determining the accuracy of the
7 test?

8 A It is very important. And those who do not
9 create the best possible controls would have a lower
10 reliability rating.

11 MR. GIUFFRA: Can we go off the record just
12 for a second?

13 THE WITNESS: Sure.

14 (Recess.)

15 BY MR. GIUFFRA:

16 Q Am I correct that there are two methods for
17 scoring a polygraph test?

18 A I doubt that you are correct. There are
19 probably any number of ways of scoring polygraph
20 tests.

21 Q The method that you use, you use the
22 numerical scoring method?

1 A No, I do not use the numerical scoring
2 method.

3 Q You use the global scoring method?

4 A Yes.

5 Q Could you please state for the record what
6 is the global scoring method.

7 A Let me make a comparison between global and
8 numerical. And you will find, by the way, other
9 examiners disagree with me. You are not going to get
10 a consensus on this.

11 The global method is to make simple
12 comparisons between the issue questions and the
13 controls in as many examples as you can find and see
14 which is the greater, essentially by gross
15 observation. The numerical systems all are in effect
16 using the micrometer to measure tiny differences in
17 the charts. I don't think the polygraph process
18 lends itself to such microm measurements.

19 Q So, in doing global scoring, that also
20 encompassed you doing a clinical examination of the
21 subject during the examination; that's a factor you
22 take into account?

1 A How do you mean a clinical examination?

2 Q You don't base it just on looking at raw
3 statistics; you look at the response of the person
4 during the course of the examination in
5 determining --

6 A You mean I decide by looking at the
7 person?

8 Q To some extent.

9 A Oh, no. No.

10 Q Tell us how you do global scoring.

11 A After the person has left, I lay the charts
12 out on the table and I look at the responses in each
13 of the four areas to all the issue questions and
14 compare them with the responses to the control
15 questions and determine which if any issue question
16 was clearly stronger than the control responses.

17 Q Do you know which method of scoring the FBI
18 uses in conducting polygraph examinations?

19 A It is the one produced by the U.S. Army at
20 Fort Gordon, Georgia, the Army Polygraph School,
21 Defense Department Polygraph School.

22 Q Is that a numerical or global scoring?

1 A That's numerical.

2 Q The FBI uses a numerical method and you use
3 a global?

4 A That's correct.

5 Q Why don't you follow the scoring method
6 used by the FBI?

7 A I said that before, but I will say it
8 again. I do not believe that the artifacts which
9 appear on polygraph charts are sufficiently amenable
10 to micromasurement so that you could rely upon those
11 numbers. It becomes something like how many words
12 can be engraved on the head of a pin. Humanity
13 doesn't run like that.

14 Q You indicated during your direct
15 examination that Ms. Williams had a strong result
16 even for a trivial lie, and you were referring to the
17 number 4.

18 A Yes. The number 4 she had written on a
19 piece of paper, stuck it up on the wall. After I
20 looked at that chart, I thought she was somewhat more
21 responsive to an almost meaningless lie than I
22 usually sought.

1 Q Could you describe a little bit more how
2 the process worked. Did you show her the number 4
3 and then ask her to say it was the number 5?

4 A No. She was sitting in the chair. Let's
5 just do it like this. She was sitting in the chair
6 and I said, here's a piece of paper, take this pen
7 and write a number between 2 and 10, and she did, she
8 chose it, and she wrote "4" real big. I said you
9 wrote 4, right? Right.

10 Then I stuck it up on the piece of
11 furniture I have over here, and I said 4, you can
12 remember it, but if you forget, that's the number you
13 wrote so you wouldn't doubt it. I said now we are
14 going to run through numbers below 4 to above 4 and
15 maybe do it the other way around, and I will ask you
16 did you choose numbers, up through including 4, and
17 when I say 4, you tell me no, just the way you tell
18 me no to every other number I ask you. It will be a
19 lie, but it will assist me in understanding whether
20 or not I can read you. Don't make a mistake and tell
21 me the truth to number 4. Do you understand? Yes, I
22 do.

1 And when I went "4" the first time, she
2 gave a pretty significant response, and then I said
3 it a second time and I think -- I can't precisely
4 remember -- we got about the same thing the second
5 time.

6 Q So the response did not diminish?

7 A I think not. I would have to go back and
8 refer to my papers. It was more than you usually
9 see.

10 Q Meaning that her response to 4 as opposed
11 to the other numbers that you read off in the
12 course --

13 A See, I have asked people that kind of
14 question hundreds of times, and they always give me a
15 little something, but she gave me more than most
16 people do. That's really what I mean by that.

17 Q What did that indicate to you?

18 A That she was a person who would give an
19 emotional response even to a lie which had been
20 instructed by the examiner. That wasn't her idea;
21 that was mine. I'm trying to get inside her and
22 understand her.

1 Q Would someone who would give an emotional
2 response to a lie put forward to them by the examiner
3 be someone who you might be less likely to get an
4 accurate reading for from the polygraph examination?

5 A I wouldn't think so.

6 Q But what is the significance of the fact
7 that she would give a more emotional response than
8 the normal person would in the course of doing this
9 number procedure?

10 A I think we could all agree that different
11 people show on the polygraph emotional responses with
12 different intensities. She was a person who is a
13 fairly strong responder.

14 Q You indicated that you gave Ms. Williams
15 three polygraph examinations in the course of your
16 examination.

17 A Well, it is all one exam, but three phases
18 that embrace the issue questions, yes.

19 Q Does the FBI do three run-throughs of the
20 issue questions as far as you know?

21 A I think not. I think they are even more
22 brief than that. I think I am more comprehensive,

1 perhaps. I don't know for sure. I'm just telling
2 you what I think.

3 Q Do you have any basis for thinking that
4 they do less run-throughs of the issue questions than
5 you do?

6 A I'm trying to think of the right words to
7 describe it. I have had a number of people come back
8 to me and say, hey, I only did it once and they said
9 I was a goddamn liar. I think I'm more comprehensive
10 than the tests that the FBI often gives.

11 Q In reviewing the results of Ms. Williams's
12 examination, did you notice any differences
13 whatsoever across each of the times which you asked
14 her the question in terms of her response?

15 A Please ask me that again.

16 Q Let's -- for example, you asked her did you
17 remove any documents from Foster's office that night,
18 and she said no; correct? You asked her that
19 question three times; am I correct? Was there any
20 discernible difference in any of the various measures
21 that you used across each of the times that you asked
22 her that question?

1 A I would have to go back and look at the
2 charts to answer that question.

3 Q Do you have your charts with you here
4 today?

5 A Yes, I do.

6 Q Maybe it would make sense to have you look
7 at your charts and read your charts so we would have
8 a better understanding as to that.

9 A I wouldn't want to answer that question
10 until I looked at them.

11 Q Why don't you take a look at them.

12 A Okay.

13 Read the question to me again.

14 Q The first question is "did you remove any
15 documents from Foster's office that night?"

16 A Okay.

17 (Witness examined the document.)

18 The differences, if any, are slight
19 indeed.

20 Q Could you state for the record what the
21 differences are.

22 A Only that they are slight.

1 Q In which direction are the differences?

2 A How do you mean by "direction"?

3 Q Are they indicating she is becoming more
4 truthful or less truthful?

5 A I really don't know how I can respond to
6 more or less truthful.

7 Q What is the terminology that you use?

8 A Well, what I would say to you is this, to
9 try to be helpful here, that's a question, "did you
10 remove any documents from Foster's office that
11 night?" I can take all three examples of that -- let
12 me continue -- all three times I asked that. They
13 are not much different.

14 I then compare them, which is what I really
15 do, is compare them against controls, and in no
16 instance did they exceed these relatively benign
17 controls. Unfortunately, they are not really strong
18 controls. In no instance did they exceed those
19 controls. That's the best answer I can give.

20 Q Was there a difference between her answers
21 to these questions and the controls, a measurable
22 difference? The response -- I gather this chart that

120

1 you have in front of you measures her response to
2 these various tests; correct?

3 A Yes.

4 Q Is there a discernible difference between
5 her answers to these questions and her answers to the
6 control questions, in looking at this chart?

7 A Well, that's really what I put in the
8 opinion letter, that in comparing the issue questions
9 against the controls, there were -- you can read the
10 language back for yourself. What that means is
11 essentially the controls in several instances were
12 stronger than any of the issue questions.

13 Q Was that in every instance or just in
14 several instances?

15 A It is not possible to answer that except to
16 look at -- let me give you one to talk about here. I
17 didn't realize that you were -- why don't you look
18 over my shoulder here.

19 Q Okay.

20 A Here's a control question. Dot. That
21 means I started the question. It is control number
22 18, and I asked the question and she said yes to it,

1 and it was really did you lie to somebody about
2 something. You look at this and you look at this
3 and, more importantly, look at that right there and
4 this here. What you see is a chorus of responses to
5 a control which exceeds the chorus of responses to
6 any issue question throughout.

7 Q This is control 18. That's the control
8 question you asked?

9 A Yes.

10 Q This is control, what, 8?

11 A Yes.

12 Q Is her response or her answer to control
13 8 -- is this question 2 or question 1?

14 A This is issue 2 and this is issue 1.

15 Q Was her response to question 1 any
16 different than her response to this control number 8?

17 A Well, look at this right here. Do you know
18 what is happening there?

19 Q I'm not the expert --

20 A That's right. So listen while I explain it
21 to you. See what happened to her heart there. The
22 fibrillation of her heart, see those things right

1 there? See if you can find that anywhere to X2, X1,
2 X6, X5. That's what I'm trying to explain to you.

3 Q Let's go to the beginning --

4 A No, no.

5 MR. KRAVITZ: Wait a minute --

6 BY MR. GIUFFRA:

7 Q Let me ask a question. This is her heart,
8 the blue line across the bottom?

9 A The next, finger clips, GSR.

10 Q The next one?

11 A Pneumograph up and down.

12 Q The next one at the top?

13 A These two are the pneumographs.

14 Q Both of those are?

15 A Yes. One is here and one is here. But I
16 want you to look at that. You can't understand what
17 I tell you until you look at some of these things.
18 Look at that right there, and then I don't care what
19 the numbers are, you show me where her cardiac
20 response -- that's what this is -- where her cardiac
21 response was as erratic and fibrillating anywhere
22 like that there.

1 Q Would it be your testimony that the
2 difference is strictly in response with regard to her
3 cardiovascular response and not her response with
4 regard to her other responses?

5 A Look at this right here. Her breathing
6 almost stopped there. Look at the breathing. It
7 almost stopped there.

8 Before we are finished, I will have to
9 charge you for instruction in polygraphy.

10 MR. CHERTOFF: Off the record for a
11 second.

12 (Discussion off the record.)

13 MR. KRAVITZ: Before you start, I think
14 that Mr. Anderson should be given an opportunity to
15 complete his answer.

16 MR. CHERTOFF: Absolutely. Finish your
17 answer.

18 THE WITNESS: I'm not sure I have. I think
19 we kind of reached a stalemate there. We are looking
20 at artifacts, and I want you to grasp what I see in
21 the artifacts. It has taken me 30-odd years to be
22 able to point those things out.

1 EXAMINATION

2 BY MR. CHERTOFF:

3 Q Mr. Anderson, my name is Michael Chertoff.
4 I am a special counsel to the majority. I am a
5 colleague of Mr. Giuffra. I apologize for being
6 late. I was detained on something else.

7 I want to understand something, and I
8 apologize for the little bit of repetition. My
9 understanding is that your method of conducting
10 examination of polygraph is a method that relies on
11 more than just the numeric output of the machine;
12 correct?

13 A Some would say less, actually,
14 Mr. Chertoff, because what I do is I do not do
15 microm measurements of the changes in these four lines
16 that we are looking at. I look at the gross changes
17 in them.

18 Q Is that because the microm measurement of the
19 changes you find to have no scientific significance?

20 A I think they may have, but the measurements
21 themselves are not sufficiently measurable to say
22 that tiny changes are significant. I don't take tiny

1 changes into account. I look for real changes,
2 larger ones, more visible ones.

3 Q Is there a school of thought that does look
4 at what you have been describing as the microchanges?

5 A Yes. I think that is a standard by the
6 Department of Defense Fort Gordon Polygraph School.
7 That's what the FBI does today.

8 Q And you differ with that?

9 A That's called chart analysis.

10 Q And you differ with that?

11 A I do not do that.

12 Q Now, in addition to the gross differences
13 as they are reflected on the chart, do you rely on
14 anything else?

15 A Let me think. I believe the answer is no,
16 but I'm going to try to think if there is anything
17 else. I don't think it is safe to do anything else.
18 You have to have clearly discernible changes in the
19 chart.

20 Q So, you do rely upon the chart exclusively
21 as the source of your data for drawing your
22 conclusion; correct?

1 A Yes.

2 Q And the difference between you and the
3 school of polygraphy that you described is associated
4 with Fort Gordon is that you look at what you would
5 describe as gross changes, whereas they will look at
6 even smaller changes?

7 A Yes.

8 Q Now, in respect to Mr. Giuffra's question
9 of before, in looking at the charts for Ms. Williams
10 with respect to, let's say, question number 1, issue
11 question number 1, "did you remove any documents from
12 Foster's office that night," can you tell from
13 looking at your charts whether there was a difference
14 in the physically measurable response she exhibited
15 when she answered that question on each of the
16 occasions you asked that?

17 A Yes. He asked me that question, and I was
18 trying to answer that question, and I don't see any
19 real differences in each time that she answered it,
20 nothing very significant.

21 Q When you say you don't see any real
22 differences or nothing significant, do you mean you

1 see on the chart they appear at exactly the same
2 point?

3 A They seem very similar, very similar.

4 Q Do you detect -- is it that you detect no
5 difference or that you discount the difference you
6 detect?

7 A I think the differences, if you were to
8 take them and overlay them, would not be meaningful,
9 especially in comparison when you compare them
10 against responses to the control questions, the one I
11 pointed out there.

12 Q But I want to make sure I understand what
13 you say when you indicate they wouldn't be
14 meaningful. Do you mean meaningful to someone who
15 uses your approach to polygraphy or meaningful to
16 someone of the school that looks at what you have
17 described as the microapproach to polygraphy?

18 A I can only answer for myself, and I cannot
19 tell you what they would do.

20 Q Now, at the time that you first embarked on
21 this examination, what was your understanding
22 concerning to whom the results would be provided?

1 A Only to her counsel.

2 Q So, your understanding going into this was
3 that the only person to get the results that you were
4 committed to giving the results to was to her
5 counsel?

6 A Right.

7 Q And you understood from that that her
8 counsel would make a decision whether to furnish
9 those results to anybody else; correct?

10 A That's correct.

11 Q In your opinion, does it make a difference
12 in the effect of the test or the way in which the
13 subject responds to the test if the subject believes
14 that the outcome of the test will be disclosed to
15 outside authorities whether the test is positive or
16 negative?

17 A You have me hooked up on some of those notes
18 and notes, but I understand exactly what you are
19 driving at. In order to deal with that problem --
20 and it is indeed a problem -- I always say to people
21 something like this: Do not get the idea that
22 because you have come here with friendly counsel,

1 someone you have retained, that you are going to pay
2 the bill, that I'm going to do you any favors. I'm
3 not going to do you any favors; you are going to get
4 exactly what the results are.

5 Let me continue.

6 Q Go ahead.

7 A That is something I always say. I don't
8 think the test is valid unless they understand they
9 can lose as well as win. And I wouldn't be ethical
10 if I didn't say things like that.

11 Q I have no doubt about that. I want to
12 focus on -- so I take it it is an important feature
13 of the test that the person who is the subject
14 understand that if the results of the test are
15 unfavorable, they have something to lose?

16 A Yes.

17 Q If they were under the impression that if
18 the results are unfavorable, it will be at no cost to
19 them, that reduces the efficacy of the test?

20 A I'm not sure I understand. "No cost," in
21 what way do you mean?

22 Q That there would be no consequence to them,

1 it would reduce the efficacy of the test; correct?

2 A Unless they understand they can lose as
3 well as win, I think it would reduce the efficacy of
4 the test.

5 Q And in terms of what you say to the subject
6 of the test, you indicate that you will report your
7 results honestly the way you interpret them; correct?

8 A Yes.

9 Q But you are not in a position, of course,
10 to indicate to the subject of the test whether
11 counsel is ever going to furnish the test to anybody
12 else besides counsel?

13 A Oh, no. I have no control over that.

14 Q So if the subject were to have the
15 understanding that an unfavorable test would simply
16 remain in counsel's files and never be turned over to
17 any authorities, that would substantially reduce
18 their possible downside risk in the test; correct?

19 A Well, there is something to what you say,
20 but when you use the adjective "substantially," I
21 don't want to be associated with saying yes.

22 Q Well --

1 A There is something there. I have to agree
2 with that. But the extent of the measurement is
3 something I would not be able to answer with
4 certainty.

5 Q It would depend on the individual?

6 A Yes.

7 Q For some individuals it might not make that
8 much of a difference; correct?

9 A I think it would vary with the person
10 involved and with the quality of counsel as well.

11 Q And I'm not suggesting any aspersions on
12 counsel, because counsel is under no obligation, you
13 understand, to turn tests over to the government;
14 correct?

15 A I know that very well.

16 Q Unless there is some prior agreement
17 that -- before the test is taken -- it is going to be
18 turned over, irrespective of the results? You
19 understand that; right?

20 A I can see where that would happen,
21 certainly.

22 Q And is it a fact that -- let me withdraw

1 the question. Am I correct that lie detector tests
2 are rarely admissible in court?

3 A You are correct.

4 Q But there are some circumstances where lie
5 detector tests have been received in certain courts
6 under certain conditions; correct?

7 A Yes.

8 Q And isn't it a fact that in all those
9 courts, the condition that is imposed -- at least one
10 condition that is imposed is that before the test was
11 taken, the subject of the test was informed that no
12 matter how the result came out, it was going to be
13 submitted to the adversary in the case?

14 A Well, you are discussing what I would call
15 stipulations.

16 Q Right.

17 A Both sides stipulate that no matter the
18 consequence. That's one of the ways in which they
19 are admitted.

20 Q And isn't it a fact that even in those
21 jurisdictions which will admit a polygraph sometimes,
22 they will not admit it if there is not a stipulation

1 before the test that it is going to be admissible and
2 turned over to the other side no matter what the
3 outcome; correct?

4 A I'm not sure that I can answer that. I
5 think there is an exception to what you say. I cited
6 it in your absence. I will call it the 11th Circuit
7 rule, where if a defendant says to the U.S. Attorney,
8 you got the wrong person, give me a polygraph and the
9 U.S. Attorney says, they are no goddamn good, you
10 don't get any polygraph, it becomes something of a
11 problem. I think that's the case. But I'm not an
12 attorney and I don't read those briefs and you know
13 that better than I.

14 Q Just for my understanding in terms of the
15 example that you used before in this particular test
16 where you had Ms. Williams tell you that the number 4
17 you had against the wall was not the number 4. Now,
18 in that test, you have informed the subject that you
19 know what the number is; correct?

20 A She wrote it in front of me. It is quite
21 obvious.

22 Q In that test, the subject understands that

1 you are not being deceived by the answer; correct?

2 A That's correct.

3 Q So in that test, you are not measuring
4 whether the subject is intending to deceive you;
5 correct?

6 A That's right.

7 Q Because the subject knows you can't be
8 deceived?

9 A It is all there.

10 Q So the test measures the reaction that
11 someone has in saying something that is uttered
12 without intent to deceive; is that right?

13 A No, it is with intent to deceive. What I
14 said in describing that was I say to them let's see
15 you throw a spinner by me, let's see how smart you
16 are. I get provocative with them, I provoke them. I
17 use the old English word of figging, you know, when
18 you are riding on a sulky and you touch the horse on
19 the fundament with a little bit of pepper. I do that
20 with everyone, I say let's see how smart you can be
21 with me. I do that even with sweet ladies, because I
22 don't think it is a valid test until I kind of give

1 them the elbow and say let's see what you can do with
2 me.

3 I don't say that is the greatest test in
4 the world, but we are dealing with the squirmy nature
5 of the human psyche. We are trying to see if I can
6 read this person and sign my name to a piece of
7 paper.

8 Q I'm trying to see what you are measuring
9 with this test. Am I correct that ultimately what
10 the polygraph is measuring is a person's physiologic
11 response to something that is deceptive; correct?

12 A Physiological response to their own act of
13 deception.

14 Q Exactly. So that, in other words, you are
15 measuring how their body responds when they
16 intentionally deceive someone else; right?

17 A Yes.

18 Q It doesn't measure reaction when someone is
19 honestly mistaken; correct?

20 A Not really correct, because if I would have
21 a sex crime case where a father was accused of
22 molesting his daughter, I would have to use sex

1 control cases and I would ask him a really ugly
2 sexual behavior question that he may have actually
3 done and he tells me yes to that, he gives me an
4 emotional response even when he is telling the truth
5 sometimes.

6 Q So that you can actually get emotional
7 responses to something that is true if the subject
8 matter is highly charged; right?

9 A Yes.

10 Q But that is not measuring intent to
11 deceive, then; right?

12 A That's right.

13 Q It is measuring something --

14 A It all depends upon the context in which
15 the questions are framed, formed and constructed.

16 Q That is measuring in that instance
17 embarrassment or whether something is emotionally
18 charged; right?

19 A Yes.

20 Q Let's talk about polygraph as a measure of
21 intent to deceive. The purpose of the test you
22 administered to Ms. Williams was to determine whether

1 in response to certain questions she was being
2 intentionally deceptive; right?

3 A Yes.

4 Q And, therefore, the preliminary or
5 controlling tests you wanted to perform also were
6 tests that you wanted to use to help you measure her
7 intent to deceive; correct?

8 A Get some sense as to how the person
9 responds, even to small problems.

10 Q Even to small intentional deceptions?

11 A Yes.

12 Q But in the example you selected, which is
13 the number 4, you had told Ms. Williams that you in
14 fact knew what the right answer was; correct?

15 A I didn't tell her. She can see it. We
16 were looking at it.

17 Q It was obvious.

18 A Obvious, yes.

19 Q So that you could not be deceived by her
20 answer; correct?

21 A Correct.

22 Q And your testimony is that you feel that a

1 response to a request that she deliberately say 4 is
2 not 4 when she knows that you know what the answer is
3 measures her reaction when she intends to deceive
4 somebody?

5 A I think it is somewhat instructive to me as
6 I go through the analysis of the charts that deal
7 with issue questions.

8 Q Is it your approach to the test that if
9 someone reacts strongly to a question that does not
10 involve an intentional deception, that it must follow
11 they will react strongly to a question that does
12 involve an intentional deception?

13 A I would like to have an example of what you
14 are driving at. I don't quite follow that.

15 Q If you asked somebody to answer the
16 question 2 plus 2 by giving the answer 5, would you
17 regard that, the measurement of the physiological
18 response to giving that answer as useful in any way
19 in your analysis?

20 A I think I have answered that before. What
21 it does is give me some insight into whether this
22 person is a responder or not.

1 Q Responding to what?

2 A To almost anything. We have a series of
3 questions that have already gone before about
4 countermeasures.

5 Q I'm sorry. I want to get back to this
6 question.

7 A Go ahead.

8 Q You are interested in determining whether a
9 person responds to any stimulus or whether they
10 respond when they are intentionally deceiving?

11 A It has a deception element contained.

12 Q And in a situation where you say to
13 somebody answer the question 2 plus 2 with the number
14 5, it is your testimony that if they do that, that
15 somehow measures their response to a statement with a
16 deception element?

17 A It assists me in analyzing them. If a
18 person is absolutely dead flat in response to any of
19 these I will call it a known lie, however small and
20 however stimulated by the examiner, dead flat, it
21 probably wouldn't mean anything.

22 But when they are responsive to something

1 as meaningless and harmless as that, what that says
2 to me is here is a person who is relatively
3 responsive. That's all there is to that.

4 Q To a stimulus?

5 A Uh-huh.

6 Q You have to answer yes when you say
7 "uh-huh."

8 A Yes.

9 Q Is this kind of preliminary questioning
10 again a generally accepted practice among
11 polygraphers in evaluating subjects?

12 A What many of them do is use marked cards.
13 That's dishonest. What I do is honest.

14 Q So -- what do you mean when you say they
15 use marked cards?

16 A They say choose a card, and that is called
17 a stim test. Then when they are finished, they
18 already know what card the person took. So they then
19 say I know you took number 7, and it is based upon
20 sleight of hand, legerdemain. It has nothing to do
21 with reality.

22 Q You will have to -- I'm having difficulty

1 following your testimony. This is a test -- this
2 so-called stim test with the marked cards I take it
3 is a test that is generally used by polygraphers?

4 A I can't say generally because how do I know
5 what they generally do. But I know that many have
6 done it.

7 Q Describe this test.

8 A You say to the person, here, I shuffled
9 these cards, pick a card. They pick a card. Because
10 the way the cards are marked, the examiner knows what
11 card they have taken without any recourse to the
12 polygraph. So he sets the cards down over there and
13 says did you take 6, 7, 8, 9, 10, and the person says
14 whatever they want to say, and they say you took
15 number 7, the polygraph showed me that. That's what
16 I'm talking about.

17 Q In that test, the person or the subject is
18 supposed to give an inaccurate response to the
19 question of what card they took?

20 A They can answer it any way they choose.
21 But he can figure them out by the use of the
22 polygraph.

1 Q And in that circumstance, the subject who
2 was answering the question, if the subject gives the
3 wrong answer about the card, is laboring under the
4 belief that the examiner doesn't really know what the
5 card is?

6 A That's correct.

7 Q So in that test, if the subject is in fact
8 misstating what the card is, the subject actually
9 believes they may be deceiving the examiner; right?

10 A That's possible, yes.

11 Q And, therefore, what the polygraph is
12 measuring is their response when they are acting in
13 the belief that they are being deceptive; correct?

14 A Yes, I suppose so.

15 Q And in your test, it is measuring a
16 response when the subject knows that you are not
17 being deceived because you have already told the
18 subject that you know the answer; correct?

19 A I think what you are saying to me is it is
20 more important for the examiner to be deceptive than
21 the tested client.

22 Q I think what I'm asking you is to answer

1 the question I asked.

2 I will ask the court reporter to read it
3 back.

4 (The reporter read the record as requested.)

5 THE WITNESS: I can't really argue with
6 that reasoning.

7 BY MR. CHERTOFF:

8 Q In other words, you agree with it?

9 A No. I said I can't argue with it. The
10 question is what weight do we put to the meaning of
11 the answer.

12 Q I'm simply trying to determine the
13 difference between your method and the method you say
14 many other examiners do as a preliminary basis. You
15 have agreed with me, have you not, that with respect
16 to the test many others use, the test involves
17 measuring a response by the subject where the subject
18 believes he or she is deceiving the examiner;
19 correct?

20 A Uh-huh.

21 Q You have to answer yes or no.

22 A Yes.

1 Q And in your test, you are measuring the
2 physiological response of the subject where the
3 subject knows he or she is not deceiving you;
4 correct?

5 A Correct.

6 Q And you regard your method of getting a
7 baseline or making a preliminary assessment as
8 superior to the other method that many others use?

9 A It depends on what your purpose is. My
10 purpose is to assist me in understanding whether or
11 not this person is a responder, not whether I can
12 trick them with cards. It is a very different
13 question.

14 Q So you believe that many other examiners
15 are using this test with the cards to try to trick
16 the subject?

17 A Well, that's what seems to be happening. I
18 never said "many." I said I only know that it
19 happens. The purpose that I do what I do is to learn
20 whether they are a responder. Part of it is are
21 their responses masked by their own personality or
22 the use of some substance. And I can see she

1 responded. That's really all that comes from that.
2 That's all the weight I attach to it. I'm not
3 attaching other weights to it.

4 Q And in addition to the test you performed,
5 you do not perform a preliminary test involving cards
6 or some other device where you have a subject who
7 believes that the subject is deceiving you?

8 A No.

9 Q Are there other kind of stim tests that are
10 used by examiners?

11 A I presume there are.

12 Q Do you know what they are?

13 A No. I presume there are.

14 Q I'm asking do you know what other kinds of
15 tests there are.

16 A No.

17 Q Does the literature on polygraph contain
18 examples of other kinds of stim tests that can be
19 used?

20 A I'm sure it does.

21 Q Do you follow that scientific literature?

22 A Not always, not all of it, no.

1 Q Do you attend courses in polygraph that
2 discuss the scientific literature on various methods
3 of running these tests?

4 A Yes, I go to the seminars once in a while.

5 Q What kind of seminars?

6 A Sponsored by the American Polygraph
7 Association.

8 Q But you don't recall different kinds of
9 stim tests that have been presented at those
10 seminars?

11 A The ones I have attended -- that is kind of
12 a fundamental you are talking about there. They are
13 usually focused on a specific area like pedophilia or
14 something like that.

15 Q Did you score this test numerically?

16 A No.

17 Q So you can't tell us on a scale of either
18 plus 6 to minus 6 or plus 3 to minus 3 where her
19 control questions fell and where her responses to
20 issue questions fell; correct?

21 A No.

22 Q Your judgment was based on your

1 interpretation of what you have described as the
2 gross differences in the graph?

3 A Could I say my words to you? Would that be
4 an answer?

5 Q Sure.

6 A I would say substantially greater
7 artifacts. That's what that comes down to. I like
8 to use those words.

9 Q Why?

10 A Because they make sense to me.

11 Q Are those customary terms within the field?

12 A Yes.

13 Q Artifacts?

14 A Yes.

15 Q And artifacts reflect the --

16 A Things you can see written on the paper.

17 Q In terms of where various points fall on
18 the graph?

19 A Yes.

20 Q But you don't score them numerically?

21 A No.

22 Q Now, do you typically in your practice have

1 an independent examiner review your interpretation of
2 the results?

3 A Not very often. Sometimes I do.

4 Q Do you think it is useful to have that for
5 quality control?

6 A I am retained by a private counsel, and if
7 they wanted an additional opinion, they would tell me
8 so.

9 Q Do you indicate to counsel generally when
10 you are retained that you think it is advisable in
11 terms of getting a valid test to have a second
12 independent examiner look at the result?

13 A Sometimes I tell them I cannot decide,
14 maybe you want to get somebody else.

15 Q I'm asking you a somewhat different
16 question. I'm asking you whether you advise clients
17 in general going into the examination that an
18 important factor in quality control is to have review
19 of the polygraph examination by a second
20 disinterested expert examiner. Do you advise them of
21 that?

22 A No.

1 Q Would you agree with me that is an
2 important safeguard?

3 A No.

4 Q Do you believe, according to the
5 literature --

6 A The safeguard you are talking about is my
7 advising them.

8 Q No. That the review by a second examiner
9 is an important safeguard.

10 A I presume that the counsel who retain me
11 are quite competent themselves and capable of
12 thinking for themselves, rather than my telling
13 that. That's not a smart-aleck answer. That's what
14 I really think.

15 Q You don't feel the need to advise them in
16 any way about it?

17 A I would think they already know that.

18 Q Do you know in this case whether an
19 independent examiner reviewed your results?

20 A No other person, no other examiner looked
21 at these charts but me until just now your
22 questioning.

1 Q Now, is it also a fact, according to the
2 literature, that repetitive testing has an effect on
3 an individual's ability to resist -- let me withdraw
4 the question. That repetitive testing has an effect
5 on subsequent tests taken by a subject regarding the
6 same questions?

7 A You are asking me is it a fact that the
8 literature says this sort of thing. I'm not going to
9 testify one way or the other to that.

10 Q Are you familiar with the literature?

11 A Only casually. I don't represent myself as
12 reading all the literature.

13 Q Do you represent yourself as an expert in
14 polygraphy?

15 A Yes.

16 Q Is a part of that familiarizing yourself
17 with the scientific literature on that field?

18 A Up to a point.

19 Q Up to what point?

20 A As long as I have time, I read them.

21 Q Do you have -- from all the years you have
22 read literature, however much it has been on this

1 subject matter, is it your understanding that
2 according to the literature, repetitive testing has
3 an effect upon the performance of a subject in
4 subsequent tests?

5 A Are you asking me if I agree with that as
6 good reasoning?

7 Q No. I'm asking you whether the literature
8 says it.

9 A I think there is literature which says
10 that, but I can't tell you how frequent, how common,
11 how regularly it appears.

12 Q How regularly the literature talks about
13 it?

14 A That's right. I can't.

15 Q But you are aware that there is a body of
16 scientific literature on polygraphy that indicates
17 that repetitive testing has an effect on a subject's
18 performance in the later test; correct?

19 A Yes, I have seen that.

20 Q And you disagree with that?

21 A No, I don't. I say that is entirely
22 possible.

1 Q In terms of the subject of countermeasures,
2 are you familiar with studies that talk about the
3 efficacy of a subject using countermeasures to resist
4 the test or to skew the results of the test?

5 A Yes, I have read that in the polygraph
6 journal.

7 Q What kinds of countermeasures are there
8 that can be used?

9 A Are you asking me to catalogue the
10 countermeasures?

11 Q I'm asking you to give me a general
12 description of the sorts of countermeasures people
13 can use.

14 A Well, let's see. The most common one is
15 thinking of something else. Another one would be
16 inserting something into your shoe. Another would be
17 biting your lip or your tongue. I'm having a little
18 trouble with the correct word for the one most
19 commonly used. I want to say feedback, biofeedback.
20 That is commonly referred to as a way to beat the
21 machine.

22 Q Do polygraphers sometimes use muscle

1 sensors to determine whether those countermeasures
2 are being used?

3 A At one time you were able to buy a
4 polygraph chair that recorded movements of the person
5 in the chair. Then they resolved that that didn't
6 prove anything anyhow, so the Stoelting Company
7 stopped selling it.

8 Q The way you assess the test results
9 involves a comparison between the degree of reaction
10 to control questions and the degree of reaction to
11 the issue questions; correct?

12 A Uh-huh.

13 Q Again, you have to answer yes or no.

14 A Yes.

15 Q I take it if the reaction to the control
16 questions is fairly high and by comparison the
17 reaction to the issue questions is lower, you regard
18 that as indicative of lack of deceptiveness; is that
19 correct?

20 A Yes. I think that is a fair way to say
21 it.

22 Q So, if someone can raise the degree of

1 their reaction to the control questions, that would
2 have an effect on your interpretation of the data;
3 correct?

4 A If, yes.

5 Q Could they use countermeasures to raise
6 their degree of reaction to the control questions?

7 A I can only respond to you by Franklin
8 Roosevelt's response to a reporter that said that is
9 a very iffy question you are asking me.

10 Q For example, you have already testified
11 that you can get a reaction on the polygraph machine
12 based not merely on deception but also if a question
13 or if a thought is highly charged and emotional;
14 correct?

15 A Yes.

16 Q So that if one were to have in mind when a
17 control question is asked a highly charged or
18 emotional thought or incident, that would affect the
19 response detected on the machine for that control
20 question?

21 A It is theoretically possible.

22 Q Is there any way to verify whether that is

1 true or not?

2 A No.

3 Q In other words, from a scientific
4 standpoint, it is impossible to make a scientific
5 determination about whether control questions can be
6 defeated through the use of countermeasures?

7 A I don't know the correct answer to that
8 question.

9 Q Would you agree with me that for something
10 to be considered scientific, it has to be objectively
11 verifiable?

12 A I have heard that definition and agree with
13 it.

14 Q It's a classic definition?

15 A Of course.

16 Q You have testified that you can't
17 objectively verify whether control questions can be
18 influenced by thinking about highly charged matters;
19 correct?

20 A Yes.

21 Q So, it would follow logically from that
22 that the ability to determine whether control

1 questions can be defeated by countermeasures is not
2 scientifically verifiable?

3 A I will answer yes to that, but I want to
4 continue and say something more. Your colleague
5 raised essentially all this with me before, and he
6 said how do you deal with these countermeasures. I
7 gave him a long answer. Either he can tell you later
8 or I will tell you now. Which would you like?

9 Q I will read it in the record. I am trying
10 to understand whether we can determine if
11 countermeasures can have an effect.

12 A If you want to know in theory, they can
13 have an effect.

14 Q There is no way to prove or disprove that;
15 correct?

16 A Possibly so.

17 Q You are not aware of anyway the prove it or
18 disprove it?

19 A I have seen nothing that would prove or
20 disprove it.

21 Q And you are not aware of anything -- of any
22 method of proving it or disproving it?

- 1 A No.
- 2 Q Most of the work you do -- let me withdraw
- 3 the question.
- 4 You left the Bureau in '74?
- 5 A Yes.
- 6 Q And you did polygraphy for the Bureau?
- 7 A Yes.
- 8 Q And then during what period of time have
- 9 you had an active practice in polygraphy?
- 10 A 1976 to the present.
- 11 Q Do you do polygraphs for attorneys
- 12 representing defendants in criminal cases?
- 13 A Yes.
- 14 Q And from time to time are those submitted,
- 15 to your knowledge, to the prosecution by those
- 16 attorneys?
- 17 A Rarely.
- 18 Q I'm sorry. The results of the tests from
- 19 time to time are submitted by the attorneys to
- 20 prosecutors?
- 21 A I say rarely.
- 22 Q Have you ever, by the way, handled any

- 1 cases in New Jersey?
- 2 A Yes.
- 3 Q In federal court?
- 4 A State court.
- 5 Q Not in federal court?
- 6 A No.
- 7 Q What was the most recent one?
- 8 A Years ago. Eight years, perhaps.
- 9 Q I also noticed from your resume that you
- 10 had done some polygraphy work for the Watergate
- 11 special prosecution force?
- 12 A That's true.
- 13 Q Whom did you polygraph?
- 14 A Richard Kleindest, Ed Reineke and the
- 15 chairman of the treasury of the Republican Party. I
- 16 think they used to call it CREEP or some other mean
- 17 name.
- 18 Q Now, did these individuals come in and
- 19 volunteer to be polygraphed?
- 20 A They negotiated with Mr. Jaworsky, I
- 21 think. I can't tell you how that all came about.
- 22 Q Do you know whether they had been

1 polygraphed before they came in to see you?

2 A I had no idea. I asked them and they said
3 no, but I didn't test them on that.

4 MR. KRAVITZ: I would like to take a short
5 break.

6 (Recess.)

7 BY MR. CHERTOFF:

8 Q Just a couple more questions,
9 Mr. Anderson. In the last five years, approximately
10 how many cases have you -- when I say "cases," I mean
11 cases involving either criminal investigations or
12 civil litigations -- have you been engaged for
13 polygraph work?

14 A In how many years?

15 Q The last five years. Let's make it easy.
16 Since January 1, 1990.

17 A I don't want to be held -- I can go back
18 and count it in the office.

19 Q Approximately.

20 A 150.

21 Q In the last five years?

22 A 200, something like that. I don't want to

1 exaggerate.

2 Q Are those mostly criminal cases?

3 A Almost entirely, and usually relatively
4 complicated, yes.

5 Q And they are cases in which defense counsel
6 have asked you to come into the office and do a
7 polygraph test for them and their clients?

8 A Yes. They come -- I don't go to their
9 office. They come to my office.

10 Q There have been situations where you have
11 been engaged to do an examination retained by counsel
12 for the defendant or the subject of the
13 investigation; correct?

14 A Correct.

15 Q What were the last five cases? Without
16 breaching a confidence, but can you describe where
17 the last five cases were that you were engaged for?

18 MR. KRAVITZ: Do you mean what courts?

19 MR. CHERTOFF: Yes, what courts.

20 MR. KRAVITZ: Is that something he can do
21 without breaching a confidence?

22 MR. DENNIS: I don't know.

1 MR. CHERTOFF: Just the jurisdiction. I
2 don't think that breaches a confidence. He is not
3 identifying a client.

4 THE WITNESS: You are asking me to do
5 something that I really can't do sitting here. I
6 could call you and tell you. I will go and look that
7 up for the last 10, say, and the point is whether
8 they were federal or state.

9 BY MR. CHERTOFF:

10 Q I'm curious where they were.

11 A I can tell you my seat of the pants opinion
12 is that they were more federal than local. I would
13 say six to four, something like that. That is
14 subject to verification.

15 MR. CHERTOFF: I understand that you and
16 Mr. Dennis do not want us to get the control
17 questions on this?

18 MR. DENNIS: The reason -- it is in the
19 record. I don't think you were here. He formulates
20 those. They are personal questions that come out of
21 doing sort of a biographical exploration. So, I
22 think if you read his response, you would understand

1 why the control questions shouldn't be published.

2 BY MR. CHERTOFF:

3 Q Let me ask you this. In general, in doing
4 control questions, are those questions as to which
5 you are confident the person is going to give you a
6 deceptive answer?

7 A You chose the word "confident."

8 Q Yes.

9 A I wouldn't go to that level. I believe
10 perhaps. You know, you are probing around when you
11 create control questions. You really can't be sure.
12 How do you know? The real good control question is
13 rare indeed. I can cite them to you out of a lot of
14 experience. No, not quite confident.

15 Q But we do know the control question has to
16 be in the generic type of area as the issue question;
17 right?

18 A That's just the right word.

19 Q In a case involving a theft, you wouldn't
20 ask a control question that was sexual in nature;
21 correct?

22 A That would be wrong.

1 Q And you sometimes can ask a control
2 question and get an answer and you don't know whether
3 the answer is deceptive or not?

4 A That's right.

5 Q So, what you are measuring in the control
6 question again is the reaction to a charged question
7 rather than whether the person is being deceptive or
8 not?

9 A Not quite correct. A hopefully charged
10 question.

11 Q So when you do a control question -- let me
12 withdraw my question and maybe go step by step.

13 As you described it to us, am I correct
14 that the control question is an indispensable
15 component in your analysis of whether someone is
16 being deceptive on the issue question; correct?

17 A That is not really so. I could give you an
18 example. But it is very important. Sometimes you
19 can do a polygraph test without a control question.
20 Shall I go into that?

21 Q Would that be an effective technique?

22 A Yes.

1 Q Is it something you do?

2 A Sure.

3 Q Under what circumstances do you do it?

4 A Let's take an embezzlement case. I will
5 just give you an abstract. You have a number of
6 suspects in the embezzlement and the bank manager
7 knows how much money was taken, and it is \$12,000.
8 That's called a peak of tension test. You can say
9 did you take 2000, 4000, 6000, 8-, 12-, 14-, 15-,
10 20-, 24-. The person who took it knows, and that's
11 meaningful, without controls.

12 Q In that case --

13 A It is called a peak of tension test.

14 Q -- you are measuring what will capture
15 somebody's attention and will have significance to
16 them in terms of their own actions?

17 A Something that the perpetrator would know.

18 Q That is not a measure of deception?

19 A He told me no to it. It certainly is a
20 measure of deception.

21 Q You are measuring not whether someone is
22 telling the truth or not as much as whether a

1 particular figure or particular characteristic has
2 some significance to the subject because of what the
3 subject knows?

4 A That's not the way I interpret what I said
5 at all.

6 Q You would not use a peak control test in
7 this instance with Ms. Williams?

8 A You asked me earlier on --

9 Q I understand --

10 A I'm trying to show places where you don't
11 use it.

12 Q Did you use a peak control test with
13 Ms. Williams?

14 A No.

15 Q Would it have been possible to do so?

16 A I don't see how.

17 Q So the only effect -- let me withdraw the
18 question.

19 Was there any method of doing
20 Ms. Williams's polygraph other than to use a control
21 test?

22 A Not that I can think of at the time. It

1 may be if I think a lot in the future, I will think
2 of it, but not now.

3 Q Was the control question, therefore, an
4 indispensable part of your analysis in this case?

5 A Yes.

6 Q And in asking the control questions and
7 getting a response, you are unable to tell us from
8 the response whether Ms. Williams was deceptive or
9 not with respect to the control question?

10 THE WITNESS: Please read the question
11 back.

12 (The reporter read the record as requested.)

13 MR. KRAVITZ: I object to that question.
14 It is impossible to understand. The testimony has
15 been there were a number of control questions used
16 during Ms. Williams's test.

17 Your question, the first part of it
18 referred to control questions in the plural and in
19 the second part of it referred to control questions
20 singular.

21 MR. CHERTOFF: Well taken.

22 BY MR. CHERTOFF:

1 Q With respect to any given control question
2 administered to Ms. Williams, were you able to
3 determine that her answer was deceptive or not
4 deceptive?

5 A No.

6 MR. CHERTOFF: I have nothing more. Thank
7 you.

8 MR. KRAVITZ: I have a couple questions.

9 EXAMINATION

10 BY MR. KRAVITZ:

11 Q Mr. Anderson, you testified that in your
12 experience, results of polygraph examinations that
13 you have conducted related to criminal investigations
14 on behalf of lawyers for suspects in those
15 investigations are rarely disclosed to the
16 prosecutors; is that correct?

17 A That's correct.

18 Q Is that because in most cases -- in most
19 such instances, the suspects fail the polygraph test?

20 A Yes. Most of them fail.

21 Q In your experience in criminal matters --
22 strike that.

1 In the polygraph examinations you have
2 given to suspects in criminal cases or in criminal
3 investigations, what percentage of those suspects
4 have passed the polygraph examinations you have given
5 and what percentage have failed?

6 A I should get it out and count, but I have
7 done some estimates on that before. It is roughly
8 about two out of every three fail, something like
9 that. I have some attorneys that won't speak to me
10 anymore.

11 Q Now, when you are saying -- just so it is
12 clear, your two out of three failure rate, that goes
13 back over the course of your entire career, or is
14 this just since you have been self-employed?

15 A It is only in the last self-employment
16 period that I have possession of those records so
17 that I can on a -- for every time flip through them
18 and say what's the score here.

19 Q Mr. Chertoff asked you some questions about
20 the importance or the possible importance to the
21 reliability of a polygraph examination of the subject
22 knowing that the test results either will or will not

1 be disclosed to an adversary. Do you remember those
2 questions?

3 A Yes, I do.

4 Q It goes without saying, doesn't it, that
5 when Ms. Williams took a test that was administered
6 by the FBI under the auspices of the independent
7 counsel's office, that Ms. Williams knew that her
8 adversary, or the independent counsel, would know the
9 results of that test; is that right?

10 A How could she miss that point?

11 Q And so any concerns about diminished
12 efficacy relating to the test that you gave to
13 Ms. Williams certainly would not have applied to the
14 test that the FBI gave Ms. Williams; is that right?

15 A Yes, and I could expand on that, but it
16 depends on what you want.

17 Q If you would like to expand, go ahead.

18 A When you touch on efficacy, the likelihood
19 of going from me to the FBI and more likely passage
20 at the FBI, that's figuring it the wrong way. You
21 are more likely to fail with the FBI because of the
22 atmosphere of the -- I will call it the federal

1 building atmosphere.

2 Q And by that you mean the intimidation
3 factor of being tested by an FBI agent in a federal
4 building?

5 A Correct.

6 Q Mr. Chertoff also -- I will take that
7 back. Mr. Giuffra asked you some questions about the
8 differences between the global scoring method that
9 you use and the numerical scoring method that the FBI
10 uses; is that right?

11 A Yes, he did.

12 Q And based on information that we all have
13 that Ms. Williams passed a test administered by the
14 FBI, you would agree that that means that
15 Ms. Williams has passed tests scored under both
16 methods; is that right?

17 A Yes. That's correct.

18 Q Does that mean anything to you? The fact
19 that she has passed tests scored under both methods,
20 does that mean anything as to the reliability of
21 those results?

22 A I suppose the first meaning that comes to

1 my mind, it shows both methods work.

2 Q Anything else?

3 A Not for the record, no.

4 Q You testified that the fact that

5 Ms. Williams gave a strong result even for a trivial
6 lie such as when she answered the control question
7 relating to the number 4 meant that she was a person
8 who gave an emotional response even for a lie that
9 she was told to tell. Do you remember that
10 testimony?

11 A Yes.

12 Q Does that indicate to you that it is less
13 likely that during the time that you were asking
14 issues questions of Ms. Williams that she was using
15 any of these so-called countermeasures to defeat the
16 purpose of the test?

17 A Yes, it does.

18 Q Why is that?

19 A Well, presuming that she could think fast
20 enough -- perhaps you recall my answer to this
21 gentleman --

22 Q Mr. Giuffra?

1 A Yes. Presuming that she could think fast
2 enough -- I'm really hung up with my own answer. I
3 don't think anybody can manipulate themselves fast
4 enough to deal with the changing -- no one has asked
5 me the question of how many seconds between
6 questions. The number of seconds between questions
7 is maybe 12 seconds. If under stress someone can so
8 manipulate themselves as to effect those
9 countermeasures in 12 seconds not knowing what is
10 going to come at the end of those 12 seconds, they
11 are a remarkable person.

12 Q When you say that someone -- that you doubt
13 that someone would know what was going to come at the
14 end of those 12 seconds, the person doesn't know
15 whether it is a control question or an issues
16 question or what it is; is that right? Is that what
17 you are saying?

18 A That is correct, and I so tell them. I say
19 I am going to change things so that you won't know
20 what is coming. I would like to break their
21 confidence.

22 Q You testified that over the course of your

1 career there have been several instances in which you
2 have issued a conclusion or your opinion that a
3 subject has passed a polygraph examination you have
4 administered, but that after the fact you have had
5 some second thoughts in your own mind and perhaps
6 even come to the conclusion or wondered whether the
7 person was lying.

8 My question to you is this: At any time
9 after you administered the polygraph examination to
10 Margaret Williams on July 30, 1994, did you ever
11 question your conclusion that Ms. Williams was being
12 truthful in answering the six issues questions you
13 posed to her during the examination?

14 A No, no.

15 MR. KRAVITZ: That's all the questions that
16 I have.

17 MR. CHERTOFF: Three minutes of questions.

18 EXAMINATION

19 BY MR. CHERTOFF:

20 Q You have had occasions where you have
21 passed someone on the test and then afterward you
22 have had doubts about it?

1 A Yes.

2 Q How much time has elapsed between the time
3 you administered the test and the time the doubts
4 surfaced?

5 A Between giving the test and when the doubt
6 surfaced?

7 Q Or between giving the test and when the
8 doubt surfaced.

9 A When counsel said to me, Bill, let me tell
10 you what the evidence is, they are going to convict
11 her, you know goddamn well, let me tell you, bang,
12 bang, bang. And I said well, I better think about
13 that a little bit more. I better think about that a
14 little more. And I go back and look at those
15 charts. In that case it was a woman and I finally
16 realized that she was not quite right up here even
17 though I thought she was. And she got convicted.

18 Q Also you indicated in response to
19 Mr. Kravitz's question that a person who had a
20 comparatively high response to control questions or
21 to these preliminary questions involving the number
22 4, if they had a lower response to the issues

1 questions, was less likely to be deceptive. Does it
2 follow from that that if someone was able to raise
3 their level of --

4 A Start that question over for me.

5 Q Let me withdraw the question. I will
6 rephrase it.

7 Mr. Kravitz asked you to make a comparison
8 between Ms. Williams's reaction to control questions
9 and her reaction to issues questions insofar as it
10 bears on her deceptiveness or lack of deceptiveness.

11 I want to ask you this: If someone is able
12 to voluntarily raise their reaction to control
13 questions or to preliminary questions of the sort you
14 have described involving the number 4, that will skew
15 the result of the test with respect to their reaction
16 to the issues question; correct?

17 A You are asking me if someone is able
18 voluntarily to raise their reactions?

19 Q Right.

20 A I have heard nothing from anybody that
21 would illustrate that's so.

22 Q That what's so?

1 A That they are voluntarily able to raise
2 their reactions.

3 Q Are you telling us now you don't think
4 someone can raise their reactions to a control
5 question by thinking of something emotionally
6 charged?

7 A What you are asking me is take that as a
8 given and then answer the question.

9 Q That's right.

10 A I don't want to take that as a given.

11 Q You don't believe someone can raise their
12 reaction to control questions by thinking of
13 something highly charged?

14 A Before I give a serious and meaningful
15 answer to that question, I would have to have some
16 demonstration that it indeed occurred, rather than
17 conjuring up possibilities.

18 Q I'm asking in general, not whether it
19 happened in this case. We will agree you are not a
20 mind reader; right?

21 A God knows I would charge a great deal more
22 if I were.

1 Q You don't know whether a person is making a
2 distinction; right?

3 A Of course not.

4 Q I'm asking as a general matter, if someone
5 is able to raise their emotional reaction to a
6 question, that will skew the result with respect to
7 the issues question; correct?

8 A Anybody's answer to that is as good as
9 mine.

10 Q I would like yours. The answer to that is
11 yes; right? It will skew the result?

12 A No, I don't want to answer that question
13 yes or no because I think it is based on an
14 assumption that has mere theoretical aspects.

15 Q Well, assume it for purposes of the
16 question.

17 A In polygraphy -- I will answer you like
18 this. In polygraphy that is not a theory that has
19 achieved general acceptance.

20 Q That someone can raise their reaction?

21 A That people can raise their reactions,
22 right.

1 Q You are telling me you do not accept the
2 possibility that by thinking of something highly
3 charged when you were asking a control question, that
4 someone can effect their reaction?

5 A That has never been demonstrated to me.

6 Q Has it ever been demonstrated that that
7 can't happen?

8 A A laugh is all I answered to that because I
9 can't really answer the question the way you phrase
10 it.

11 Q Because it is not subject to being verified
12 as we previously established; right?

13 A What you are saying is based upon this
14 speculation that I'm offering you, tell me whether it
15 is at all possible. I'm not going to so speculate.

16 Q I'm asking you whether as a scientific
17 matter you can prove or disprove the proposition that
18 it is possible by thinking of something highly
19 charged to raise your emotional response to a control
20 question.

21 A Given no example and in the abstract in
22 theory, you could possibly be right.

1 Q Do you know if there is any literature on
2 that question?

3 A Let me give you an answer that I gave to
4 Mr. Giuffra before --

5 Q Please, please, you have to answer the
6 questions I ask.

7 A I will give you the same answer I gave
8 him. He asked me that question.

9 Q Is there any literature on that?

10 A Is answer is I think not, and I will tell
11 you why I think not. My wife is a doctor of
12 psychology. That doesn't make a damn bit of
13 difference to anybody here but it will make the
14 point. In discussions over certain legal issues -- I
15 can't remember the author's name -- she made much of
16 denial, denial, denial. So I said to madam, get your
17 dues back from the American Psychological Association
18 by inquiring of them why can't you have all the
19 written pieces that exist on denial, why can't you
20 have the masters and doctoral theses on denial. Get
21 those and let me read them because I don't think
22 there is anything much to it.

1 And over several months she made inquiry of
2 the American Psychological Association and their
3 answer was we have no published documents on the
4 subject of denial. And I think the question you are
5 asking me is in league with that. And I am not
6 quoting myself. I am telling you I have tried to
7 find that answer. That's why I'm reluctant to put my
8 arms around your question and tell you that it is
9 possibly true, because I have tried harder than you
10 to get the answer and I couldn't, and I did with
11 better authorities than myself.

12 Q No one has studied that question, to your
13 knowledge?

14 A No. What I said to you is nothing has been
15 published. That's a different answer.

16 Q Do you know of anybody who studied it?

17 A I'm happy to tell you that I'm not a
18 psychologist.

19 Q I'm not talking about denial. I'm asking
20 whether anybody has studied the question that I
21 raised before concerning control questions.

22 A Whether or not, if I phrase your question

1 back to you, a person can raise their emotional
2 responses by having it up here?

3 Q Indicate that he is gesturing -- pointing
4 to his head.

5 A To his head.

6 Q Has anyone studied the question?

7 A By merely taking a thought and add a cubit
8 to your stature --

9 Q I stated the question. I will do it again
10 for you if you want. The question is whether you are
11 aware of any studies about a person's ability to
12 voluntarily affect their emotional responses to
13 control questions such as, for example, by thinking
14 of something emotionally charged?

15 A Just a moment. Let me think about that. I
16 think I have the answer for you. Let me think a
17 moment.

18 (Pause.)

19 This is as close as I can get to answering
20 you. I think that there is the beginning of studies
21 on that. At the University of Iowa there is a
22 physician and a whole staff studying that question of

1 can you subsume some guilty truth, can you get rid of
2 that thought, can you deny it and get rid of it
3 entirely. They do it by studying the progress of
4 neurons in the brain.

5 They have -- it was published in the
6 Tuesday science section of The New York Times on
7 December the 10th. Their conclusion was that you
8 cannot, you cannot do that.

9 Q Most respectfully, Mr. Anderson, I think I
10 asked a different question.

11 A I'm giving you the best answer that I can.

12 Q So the record is clear --

13 A The answer to your simple question is no.

14 MR. CHERTOFF: I have nothing more.

15 (Whereupon, at 7:30 p.m., the deposition
16 was concluded.)

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WILLIAM B. ANDERSON

CERTIFICATE OF NOTARY PUBLIC & REPORTER

183

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey
Notary Public in and for the
District of Columbia

My Commission Expires APRIL 14, 1996

AFFIDAVIT OF EDWARD S.G. DENNIS, JR.
COUNSEL TO MARGARET A. WILLIAMS

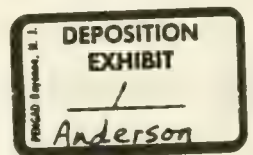
Edward S.G. Dennis, Jr., states as follows:

1. I am a partner at the law firm Morgan, Lewis & Bockius and have been a partner there since September 1990.

2. I am counsel to Margaret A. Williams, Chief of Staff to The First Lady. Ms. Williams has partially waived her attorney-client privilege and has authorized me to make and disclose this affidavit.

3. In approximately July 1994, I was advised by the Office of Independent Counsel that an individual had claimed that on the night of Vincent Foster's death he saw my client, Margaret Williams, leaving the White House office of Vince Foster with documents in her arms. The Office of Independent Counsel did not tell me the identity of this individual nor was I told of further details of this individual's statement. Ms. Williams categorically denied taking any documents from Foster's office and on my advice took a polygraph test on the subject.

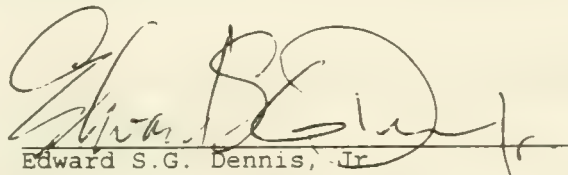
4. I arranged to have Ms. Williams polygraphed. This polygraph was administered by a distinguished expert in the field, Mr. William Anderson. Mr. Anderson has 27 years of experience as a supervisory Special Agent and polygrapher with the FBI, during which he performed hundreds of polygraph examinations, including several for the Watergate Special Prosecutor. His examination confirmed that Ms. Williams was truthful in her assertion that she did not remove any documents from Foster's office on the night of his death.



5. In order to persuade the Office of Independent Counsel on this point, I proposed to have Ms. Williams take a polygraph examination to be administered by the Office of Independent Counsel. The Office of Independent Counsel accepted my offer. As she had volunteered to do, Ms. Williams submitted to a polygraph examination by the Office of Independent Counsel. Before the examination started, I advised the polygrapher that Ms. Williams had already been polygraphed, so that he could satisfy himself that the previous polygraph would not affect the results of his examination. The polygrapher from the Office of Independent Counsel indicated that the previous examination would not affect the results of his own test, and the examination proceeded.

6. During this examination, Ms. Williams again stated that she did not remove any documents from Foster's office on the night of his death. After the examination was completed, the polygrapher advised me that the examination indicated that Ms. Williams was truthful in her assertion that she did not remove any documents from Foster's office on the night of his death.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 24, 1995.



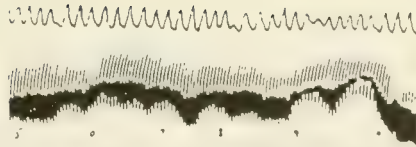
Edward S.G. Dennis, Jr.

1995. Subscribed and sworn to before me this 24th day of July,

Tilina Karen Olson
Notary Public

My Comm. Exp. 1/1/2005

Wm. B. Anderson, Jr.
RT 1, Box 212
Glenmoore, PA 19343
(610) 469-8638



Polygraph Examinations
Criminal & Financial Investigations
Consultation
Fax (610) 469-8639

Training and Education

U.S. Marine Corps, Pacific Islands & China, OCS WWII; B.A. Penn State University 1948; FBI Academy, 1948; and FBI Polygraph School #1 Oct. 1960, plus current polygraph seminars

Investigative Experience

Special Agent and Supervisor, FBI, 27 years (1948-1974). Included a very wide range of criminal investigation, from simple to extremely complicated, and of all types, from violence to sophisticated fraud. Thirty special commendations for notable success in these investigations and as FBI Supervisor

October 1979 to November 1980 – On leave of absence from the University to serve as Executive Director of Pennsylvania State Crime Commission, an independent state agency with a statutory charter to investigate organized crime and public corruption. Produced the "1980 Report - A Decade of Organized Crime", a standard reference work.

1974-Present – Investigative consultant to, and operational for, corporations, government agencies and law firms with such problems as violations of trust, research, and personnel matters. Fiscal and Management Analyses in Distilling, Banking, Paper, Publishing, Precious Metals, Mining, Hospital, Rail Industries, and Corporate Takeovers, among others.

Polygraph Experience

Hundreds of polygraph examinations in investigative direction of FBI criminal investigation, 1960-1974, including: Extortion, Bank Robbery, Bank Embezzlement, Forgery, Aircraft Piracy, Kidnapping, Theft of Government Property, Obstruction of Justice, Perjury, Organized Crime, White Collar Crime, and Espionage. Many were of great complexity, several done for the Watergate Special Prosecutor.

Since 1974, conducted hundreds of examinations for newspapers, corporations, law firms, attorneys in private practice and government agencies where precision and confidentiality were of special importance. Most involved charges of serious criminal acts, frequently fiscal in nature. Admitted as expert polygraph witness in PA courts.

Publications

Author of "Notable Crime Investigations", Thomas Publishing, Springfield, IL, 1987, a college textbook in criminal investigation. Focuses on investigative processes and solutions in murder, kidnapping, rape and armed robbery in New York City, Western PA, Kansas, Houston, Philadelphia, Los Angeles, Bellingham, Washington, and Sydney, Australia.

Security Instruction/Consultation

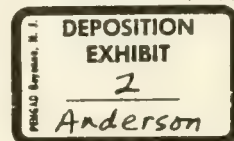
Lethal Weapons Training Act instruction for Corporate Security Staffs at General Electric, Sun Oil, Sun Ship, Franklin Mint, Matthey Bishop, Inc., and various private security companies

Security consultant to Girard Bank, Mellon Bank, Fidelity Bank, Matthey Bishop, Inc., and Franklin Mint.

University Employment

January 1975 to August 1986 – professor, Criminal Justice Department, West Chester University, West Chester, Pennsylvania. Chairman 1982-86. Instructing undergraduate and graduate students in criminal investigation, generally. Specific courses: Major Case Investigation, Official Corruption, Organized Crime, Scientific Crime Detection, Instrumental Detection of Deception (polygraph), White Collar Crime, Municipal Police Administration, Notable Criminal Cases and the Honors Program in Criminal Justice. Lecturer on polygraph process, Dickenson Law School, Carlisle, PA.

5/94 WBA



**DEPOSITION OF DEBORAH L. GORHAM
IN RE: S. RES. 120**

MONDAY, JULY 31, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of DEBORAH L. GORHAM, called for examination pursuant to notice of deposition, at 2:01 p.m. in Room 534 of the Dirksen Senate Office Building, before PATRICIA A. ZUBER, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, Esq.
Majority Special Counsel
ALICE S. FISHER, Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
GLENN F. IVEY, Esq.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

DAVID E. MILLS, Esq.
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On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Deborah L. Gorham | |
| by Mr. Chertoff | 3 |
| by Mr. Ben-Veniste | 52 |

EXHIBITS

| | |
|--------------------|------------|
| Deborah L. Gorham | |
| DEPOSITION NUMBER | IDENTIFIED |
| Exhibit DG-1 | 43, 4750 |
| Exhibit DG-2 | 43, 4751 |

1 PROCEEDINGS

2 Whereupon,

3 DEBORAH GORHAM

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. CHERTOFF:

8 Q Thank you, Ms. Gorham. I know you've been
9 through a deposition before. I'm not going to repeat
10 all the preliminaries except to say that we will get
11 you a copy of the deposition as soon as possible. I
12 suspect it won't be ready until tomorrow morning, but
13 we'll be happy to furnish you with a copy as soon as
14 we get one if your lawyer wants to come by a little
15 early and give you an opportunity to look at it to
16 see if there are any corrections. I don't envision
17 it's going to be a long deposition.

18 The reason we've asked you back is because
19 in the period of time since you left we've come into
20 possession of some documents, some E-mail traffic
21 from the White House and I think that may help us
22 focus a little bit more on some of the issues that

4

1 you were asked about last time.

2 What I'm going to do is first I'd like to
3 ask you, was it your practice when you worked in the
4 White House counsel's office from time to time to
5 communicate with Linda Tripp on E-mail?

6 A Yes.

7 Q And that would be not only with respect to
8 moving documents back and forth or preparing things
9 to go out, but also, in a sense, conversation between
10 yourselves?

11 A At a point in time we -- according to these
12 electronic mail messages we conversed,
13 telecommunicated in that way simply because the day
14 after, days after Vince's death we did not think it
15 was appropriate to stand there, be talking to one
16 another or be talking in an open fashion.

17 Q Why is that?

18 A I think out of respect we thought it would
19 be inappropriate. It would look like, you know,
20 standing there gossiping and talking, and the phones
21 were ringing quite frequently and we felt it was
22 probably more important to sit at our desks and

1 answer those phones.

2 Q So in other words, although normally --
3 (Discussion off the record.)

4 BY MR. CHERTOFF:

5 Q Am I correct, therefore, that ordinarily
6 you and Ms. Tripp would simply talk face to face, but
7 that during the period of days or even a couple of
8 weeks after Mr. Foster's death, because of the
9 situation in the suite, you restricted your
10 conversation with Ms. Tripp via E-mail?

11 MR. BEN-VENISTE: I doubt that's what her
12 testimony is, that she never talked to Ms. Tripp.

13 THE WITNESS: Well, perhaps I should
14 clarify this. Normally it was our practice to
15 communicate verbally, except for this day, according
16 to these electronic mail messages, we communicated at
17 that period of time by electronic mail, even though I
18 don't recall those particular electronic mail
19 conversations.

20 BY MR. CHERTOFF:

21 Q Have you seen the E-mail conversations that
22 were recorded during the week or two after

1 Mr. Foster's death?

2 MR. MILLS: Which ones are you referring
3 to?

4 MR. CHERTOFF: Any, any E-mail, any hard
5 copy E-mail conversations from the White House that
6 were recorded after -- the two weeks or so after
7 Mr. Foster's death.

8 THE WITNESS: Yes, sir.

9 BY MR. CHERTOFF:

10 Q When did you see those?

11 A I believe day before yesterday.

12 Q Who provided those to you?

13 A My attorney.

14 Q Do you know where they came from?

15 MR. MILLS: They probably came from the
16 White House. Anything wrong with that? Does she
17 have to read them in the newspaper first?

18 MR. CHERTOFF: I'm just asking a question,
19 Mr. Ben-Veniste. If you have a problem, if there is
20 something on your mind with respect to my question,
21 state an objection.

22 MR. BEN-VENISTE: It seems like the

1 implication is that there was something unusual about
2 that.

3 MR. CHERTOFF: I haven't made an
4 implication at all. I'm just asking if you know
5 where you got them from.

6 MR. BEN-VENISTE: She said she got them
7 from her attorney.

8 MR. CHERTOFF: I didn't know we'd noticed
9 your deposition, Mr. Ben-Veniste. Can I ask the
10 witness?

11 BY MR. CHERTOFF:

12 Q Do you know where they came from
13 originally?

14 A I don't recall at the moment where he told
15 me they specifically came from. If they came from
16 the White House or -- I'm sorry, I just don't
17 recall. I just recall him showing them to me.

18 MR. MILLS: If you're not aware, I did get
19 them from the White House, Mr. Chertoff.

20 MR. CHERTOFF: That's what I wanted to
21 know. And I gather you got them a couple of days
22 ago.

1 MR. MILLS: I got them last week.

2 BY MR. CHERTOFF:

3 Q All right. So now I'm going to show you
4 what have been marked with us as Bates numbers Z1206
5 through Z1214. Let me give you a set so we can kind
6 of work through these together. Before we begin to
7 go through them, may I ask you, Ms. Gorham, other
8 than talking to your attorney, have you discussed
9 these E-mails with anybody else since first saw them?

10 A No, sir.

11 Q Let's just start at Z1206. The format here
12 is it says "record type" at the top and it says
13 "none." Do you know what that means?

14 A No, sir.

15 Q Okay. And then it indicates "creator:
16 Deborah Gorham." Is it your understanding that you
17 were the person who inputted the message onto the
18 computer with respect to this particular message?

19 A Yes, sir, as I interpret this, yes.

20 Q And then it gives a creation date and time
21 of 27 July 1993 and then it's to Linda Tripp. Do you
22 understand that to indicate the time that the

1 document was created and the person to whom you
2 directed the E-mail message?

3 A Yes, sir, in that context.

4 Q Now, just to help you kind of put this in
5 your -- in a time frame, the record has already
6 established that at approximately 4:00, sometime
7 after 4:00 on the 26th of July, which was a Monday,
8 Mr. Neuwirth, Stephen Neuwirth of the office
9 indicated that he had -- to some other people that he
10 had found a writing in the briefcase in Mr. Foster's
11 office. And I guess the shorthand way of saying it
12 would be to say that there was a discovery of that
13 writing on the 26th of July, 1993. So this would be
14 the following morning.

15 MR. BEN-VENISTE: I believe the testimony
16 is he found scraps of paper with writing on them.

17 MR. CHERTOFF: Right, that's correct.

18 BY MR. CHERTOFF:

19 Q And let me ask you first, when did you
20 first become aware that there had been scraps of
21 paper -- that Mr. Neuwirth had found scraps of paper
22 in the briefcase on the 26th of July?

10

1 A I was not aware that scraps of paper were
2 found until much later in the year. Through this
3 kind of hectic time I was -- I perceived or assumed
4 that something had been found.

5 Q And do you remember how you came to have
6 that impression?

7 A Simply by on the morning of the 26th
8 Mr. Neuwirth leaving -- if that was Monday -- leaving
9 Mr. Foster's office with his satchel in hand and
10 running into Mr. Nussbaum's office and then calling
11 other people, I assumed there was something of
12 significance in that briefcase, and --

13 Q You witnessed this yourself?

14 A Yes, sir.

15 Q Did you say on the morning of the 26th?

16 A The best I can recall.

17 Q Could it have been later in the day?

18 A It could have been. I just don't recall.

19 Q But tell us what you recall seeing.

20 A Mr. Neuwirth coming out of Mr. Foster's
21 office with a satchel in hand, going into Bernie's
22 office and slamming the door and then coming out and

1 directing someone to find Bernie and Mr. Nussbaum
2 coming back into his office, slamming the door,
3 Mr. Nussbaum going out of his office and slamming the
4 door.

5 Q And then what?

6 A Then other people were coming in and
7 leaving.

8 Q Coming into Mr. Nussbaum's office?

9 A Into Mr. Nussbaum's office, yes.

10 Q Do you remember who those other people
11 were?

12 A I believe one individual was Bill Burton
13 and I cannot recall who else had come in that office.

14 Q Do you remember the First Lady going into
15 that office?

16 A No, I don't recall her coming in or not.

17 Q Now, were you sitting in the -- was this
18 traffic in and out of Mr. Nussbaum's office after the
19 briefcase -- you had seen the briefcase being taken
20 into Mr. Nussbaum's office, were you sitting outside
21 during this traffic?

22 A Yes, sir.

1 Q What's the next thing you remember
2 concerning the briefcase?

3 A I'm sorry. I just don't recall. If
4 someone had shown me the briefcase after that period
5 of time until -- well, that's the date that I recall
6 seeing it --

7 MR. MILLS: Until subsequent
8 investigators --

9 THE WITNESS: Until I was shown that
10 briefcase at a later time.

11 BY MR. CHERTOFF:

12 Q So on the 26th you remember Mr. Neuwirth
13 coming out of Mr. Foster's office with a briefcase
14 and going into Mr. Nussbaum's office and then some
15 traffic in and out of Mr. Nussbaum's office?

16 A Yes.

17 Q Was Linda Tripp in the suite at this point
18 in time?

19 A I don't recall if she was or was not. I
20 can't recall that she was out that day, so, yes.

21 Q You don't remember one way or the other?

22 A I'm sorry, no, I don't.

1 Q Let me direct your attention to Z1206.
2 Would you tell us how you came to write this E-mail
3 message to Linda Tripp?

4 A I don't recall this electronic mail
5 message, and regarding the text -- I certainly
6 thought about this at very deep length -- and I don't
7 recall if I was in a meeting with Bernie and shown
8 his briefcase when Bernie asked me at a later period
9 of time after this discovery of some type about if I
10 knew of any contents of the briefcase. I don't
11 recall if possibly he showed it to me or not.

12 Q Okay. In any case, given the time of 10:29
13 on 27 July, is it fair to say that by the time you
14 wrote this E-mail message you had somehow become
15 aware of the fact that the briefcase was, as of this
16 point in time, empty?

17 A I believe that's fair to assume that, yes.

18 Q Let me move to the next page, which is
19 Linda Tripp's response to you. It says "the little
20 yellow sticky or was there more?" What did you
21 understand this to mean?

22 A I'm sorry. I don't recall this message. I

1 don't recall if I had made a statement to her about
2 in the past Vince had always liked yellow stick-um
3 notes thrown into the bottom of his briefcase.

4 Q Do you remember at an earlier point in time
5 having had a discussion with Ms. Tripp concerning the
6 fact that at some point you had seen into
7 Mr. Foster's briefcase after his death and had seen
8 what you thought were little yellow Post-its in the
9 bottom?

10 A It's a possibility that I might have had a
11 conversation with her telling her that I had seen
12 yellow. And it might have just simply been part of
13 the conversation that I might have had with Bernie
14 when he interrogated me and asked me what I had seen
15 in his briefcase.

16 Q Now, when did Mr. Nussbaum interrogate you?

17 A I don't recall specifically what day it
18 was. It could have been late that Monday or it could
19 have been Tuesday morning. I really only recall the
20 conference with him.

21 Q Okay. Well, is it fair to say that this
22 would have occurred sometime after you saw

1 Mr. Neuwirth coming out of Mr. Foster's office with
2 the briefcase and sometime before this E-mail traffic
3 began?

4 A Yes, sir, I would say it would be fair to
5 assume that.

6 Q Okay. Tell us about this conference with
7 Mr. Nussbaum.

8 A I don't recall what initiated it. I only
9 recall sitting at the other side of his desk and his
10 very fervent, numerous questions of what I had seen
11 in the briefcase. I don't recall if he even, if he
12 picked up the briefcase and showed it to me. I just
13 simply recall my response. I'd only seen something
14 yellow and the top of a Goldcraft folder as you have
15 right there and he asked me numerous times over and
16 over again.

17 Q Was anybody else there?

18 A Not that I recall.

19 Q Do you remember -- do you have a sense of
20 whether it was in the evening or the following
21 morning?

22 A I cannot recall the time.

1 Q Do you remember how long this discussion
2 occurred?

3 A No. I can only guess it would have been a
4 short conversation.

5 Q And you say he kept asking you over and
6 over again whether you'd seen anything in the
7 briefcase?

8 A That's correct.

9 Q When you told him about the yellow paper
10 and the top of the folder, what was his response to
11 you?

12 A Well, I only told Mr. Nussbaum that I'd
13 seen the color yellow and he then asked me well, was
14 it paper, was it a folder, what was it. And I told
15 him that I'd only seen the color yellow at a glance,
16 and it was just simply out of the corner of my eye.

17 Q And what did he say?

18 A Are you sure, could it have been this,
19 could it have been that. And again, after numerous
20 times I just answered this is all I saw, Bernie.

21 Q Did he indicate to you why he was asking
22 you these questions?

1 A He did not.

2 Q Is there anybody else from the White House
3 counsel's office -- I'm not talking now about the FBI
4 or the Park Police -- anybody else from the White
5 House counsel's office at any point who asked you
6 similar questions about when you had seen or what had
7 you had seen in Mr. Foster briefcase?

8 MR. MILLS: Just for clarification, are you
9 talking about that period of time?

10 MR. CHERTOFF: At any point.

11 THE WITNESS: From the White House, sir?

12 BY MR. CHERTOFF:

13 Q Counsel's office.

14 A Not that I recall. That conversation
15 stands out vividly in my mind.

16 Q Is there anything else you can remember
17 about that conversation?

18 A I cannot remember what else we spoke
19 about. At that time I might have talked to him about
20 other matters, but at this point in time I cannot
21 recall what our other -- what other conversations
22 took place.

1 Q What other matters do you think you might
2 have talked to him about?

3 A Possibly I might have spoken to him
4 about -- as it's shown in the next message about
5 Vince putting or shredding personal documents in his
6 burn bag, but I just don't recall that part of the
7 conversation.

8 Q You're not sure that you discussed that
9 with him?

10 A I'm not sure whether I did or did not.

11 Q All right. Let me move on now to the next
12 E-mail where you say to Linda "I do not know what
13 else was in there but the bag is totally cleaned out
14 except for one collar stay." Is this, again, a
15 reference to your having looked in the bag and
16 being -- and seeing at that point that there was
17 nothing in it?

18 A I believe so. In this context this is what
19 I was referring to. I don't recall if Bernie held
20 that bag up to me and said, you know, was there
21 anything else in there. I just don't recall that
22 part of the conversation.

1 Q Now, then we go on now to the next passage,
2 which is from Linda. There's one word I'm going to
3 delete, but I'm going to ask you to characterize who
4 it refers to. "It seems that whatever was uncovered
5 was uncovered by," and then I'm going to delete an
6 expletive and ask you whether there's a word there
7 that is an unflattering reference to somebody?

8 A Yes, I believe it's unflattering and it
9 refers to someone specific.

10 Q Who does it refer to?

11 A I believe it refers to Stephen Neuwirth.

12 Q Is it fair to say that Ms. Tripp had a
13 negative view of Mr. Neuwirth in terms of his
14 demeanor and conduct around the office?

15 MR. MILLS: If you can say.

16 THE WITNESS: Yes, sir.

17 BY MR. CHERTOFF:

18 Q Okay. We'll just, since the word comes up
19 again we'll refer to it as Mr. Neuwirth, but we'll
20 understand that it's a reference as opposed to his
21 name.

22 "It seems that whatever was uncovered was

1 uncovered by" Mr. Neuwirth, "who summoned our boss,
2 who then summoned BB, who then summoned H -- and
3 whatever it was provoked the need for notetaking --
4 and had to do I presume with the burn bag -- I can't
5 imagine that anyone as meticulous as this individual
6 was would have left anything he did not intend to be
7 found." Now, what did you understand from this
8 message?

9 A Well, again not recalling receiving this
10 message, I believe that Linda -- I'm assuming she
11 refers to "our boss" being Mr. Nussbaum, "who then
12 summoned BB," and she might refer to Bill Burton "who
13 then summoned H," and that's probably Hillary. And I
14 do not know what is meant here by "a need for
15 notetaking," and I think she is specific there about
16 a burn bag.

17 Q What does the reference to the burn bag
18 mean?

19 A I really don't know. I mean, I know what a
20 burn bag is, but I don't know.

21 Q You don't recall what this was about?

22 A No, I'm sorry.

1 Q Okay. And then it says "I can't imagine
2 that anyone as meticulous as this individual was
3 would have left anything he did not intend to be
4 found." What did you understand by that?

5 A As I understand it today, I think she may
6 be speaking about Mr. Foster.

7 Q Now, stepping back from going line by line,
8 what is your sense at this point in the conversation
9 about what Ms. Gorham was telling you, and
10 particularly with respect to the burn bag?

11 MR. MILLS: Just to clarify, this is
12 Ms. Tripp's message.

13 BY MR. CHERTOFF:

14 Q I'm sorry, what Ms. Tripp was telling you?

15 MR. MILLS: And the witness has already
16 testified that she doesn't recall the specific one,
17 but she can testify what the --

18 BY MR. CHERTOFF:

19 Q Your general sense of what you believe
20 Ms. Tripp is telling you here.

21 A It would be total speculation. I think
22 she's saying whatever was uncovered was uncovered by

1 Mr. Neuwirth, and by him I believe she must mean when
2 he was coming out of the door with Mr. Foster's
3 satchel, that possibly there was something found in
4 there and this is what brought on Mr. Nussbaum being
5 summoned and Mr. Burton being summoned and other
6 individuals being summoned. I still don't understand
7 what -- I can't even assume or speculate what she
8 means by "notetaking," and I really don't know what
9 it means by "and had to" -- "and had to do I presume
10 with the burn bag."

11 MR. MILLS: You mean you don't know what
12 she was speculating about?

13 THE WITNESS: Well, I mean, I could
14 speculate that possibly --

15 MR. BEN-VENISTE: The witness is now
16 speculating about what Ms. Tripp was speculating
17 about.

18 MR. CHERTOFF: That's right.

19 THE WITNESS: Right. And I'm just trying
20 to make some sense of what she said too.

21 BY MR. CHERTOFF:

22 Q Okay, help us out the best you can.

1 A I don't know if "notetaking" refers to the
2 burn bag.

3 Q So you can't give us even some speculation
4 about what you think the reference to the burn bag
5 is?

6 A Unless they've taken the burn bag out of
7 Mr. Foster's office or they were looking for a burn
8 bag or looking in a burn bag.

9 MR. MILLS: I think she's answered the
10 question.

11 THE WITNESS: I'm sorry.

12 BY MR. CHERTOFF:

13 Q I thought you were thinking. I didn't want
14 to rush you. Let's move to the next line where you
15 go to Ms. Tripp, "what provoked COS to call BWN was
16 the briefcase." Now, who is COS?

17 A I believe in this text it refers to
18 Mr. Neuwirth.

19 Q All right, I won't ask you what
20 specifically it means. And BWN is Mr. Nussbaum,
21 Bernard W. Nussbaum?

22 MR. MILLS: She can explain what COS means.

1 THE WITNESS: I can. Ms. Tripp in our
2 office referred -- it was another nickname for
3 Mr. Neuwirth, it stood for chief of staff.

4 BY MR. CHERTOFF:

5 Q Is that because Mr. Neuwirth was kind of
6 chief of staff to Mr. Nussbaum?

7 A I don't know if that was officially or
8 unofficially. I believe Mr. Neuwirth probably
9 carried on a great deal of administrative
10 responsibilities for Mr. Nussbaum, and I think that
11 he gave direction to staff members, and probably in
12 that way --

13 Q So COS was a nickname for -- another
14 nickname for Mr. Neuwirth?

15 A Yes, sir.

16 Q "What provoked COS to call BWN was the
17 briefcase. Once BWN arrived, I forgot who went into
18 VWF's office to get the burn bag. But they must feel
19 like a slapstick comedy by not returning the burn bag
20 along with the briefcase." What did you mean by
21 that?

22 A Well, again, I don't recall this message.

1 I can only speculate that -- it's obvious about the
2 first sentence. I don't recall who went into Vince's
3 office to get the burn bag. I don't even recall
4 someone going in and taking the burn bag if there was
5 one in there. And "slapstick comedy," it's certainly
6 no disrespect, but the amount of people going in and
7 out of Bernie's office and so forth and going in and
8 slamming the door and coming back out, it seemed
9 quite hectic there.

10 Q Well, putting aside -- I'm sorry, go ahead,
11 finish up.

12 A And I do not -- I cannot recall what is
13 meant by "by not returning the burn bag along with
14 the briefcase."

15 Q Well, do you remember at a point in time
16 that evening on the Monday, did someone take -- or
17 maybe the following Tuesday morning, did someone take
18 Mr. Foster's briefcase back into Mr. Foster's office
19 out of Mr. Nussbaum's?

20 A I don't recall if someone did or did not.

21 Q And you don't remember someone at some
22 point going into Mr. Foster's office and getting a

26

1 burn bag and bringing it out and then not bringing it
2 back?

3 A No, I do not recall if that was done or
4 not.

5 Q I take it that you have no doubt that at
6 the time you wrote the E-mail what you were telling
7 Ms. Tripp was what your recollection at that time
8 was?

9 A Yes, sir, I have no doubt that it's
10 probably my recollection, yes.

11 Q Now, let me go to the next page where Linda
12 Tripp sends you a message and begins "The Three
13 Stooges. But why on God's green earth would the burn
14 bag not have been sifted through immediately, not
15 days later? And of course it would be secured along
16 with all else and not left hanging around in an
17 unsecured area."

18 What did you understand Ms. Tripp to mean
19 by that?

20 A I think that we -- I believe that Linda --
21 reading this today I believe that Linda was
22 speculating as to if the burn bag had or had not been

1 sifted through. I think she was speculating that
2 possibly it had not been sifted through, and this was
3 the reason for if indeed someone went into Vince's
4 office to get a burn bag. I think this is what she's
5 speculating to, as to if it was secured along with
6 everything else, and if that it was not left or it
7 was left hanging around in an unsecured area.

8 Q Do you know why the issue of the burn bag
9 came up at this point, given that your understanding
10 was that the pieces of paper had been found in the
11 briefcase?

12 A No, sir. At that time I did not know that
13 pieces had been found in the briefcase at all, and I
14 know in the prior message I don't recall presently
15 seeing someone -- recall someone going in and out
16 with the burn bag even though, of course, that was my
17 electronic mail message.

18 Q But you did remember seeing someone come
19 out of Mr. Foster's office with the briefcase and
20 going into Mr. Nussbaum's office?

21 A Yes, Mr. Neuwirth.

22 Q And so I take it in your mind you

1 associated that with the discovery of pieces of paper
2 in the briefcase?

3 A No, I didn't associate it with anything. I
4 only associated it with the manner and the quickness
5 in which Mr. Neuwirth rushed out of Mr. Foster's
6 office and went into Bernie's office and slammed the
7 door and came back out, opened the door and yelled
8 for someone to find Mr. Nussbaum and going back in
9 and slamming the door. I assumed there was something
10 that was of concern to Mr. Neuwirth.

11 Q And then, of course, sometime that Monday
12 night or Tuesday morning before the E-mail traffic
13 you had been with Mr. Nussbaum at a time which
14 Mr. Nussbaum asked you whether you had seen things in
15 the briefcase?

16 A That's correct.

17 Q So you knew that as well?

18 A I knew --

19 Q You knew that as well as of the time -- you
20 had that in mind as well as of the time the E-mails
21 were being sent back and forth?

22 MR. BEN-VENISTE: I'm sorry, I don't

1 understand the question.

2 THE WITNESS: I'm sorry, Mr. Chertoff.

3 BY MR. CHERTOFF:

4 Q At the time the E-mails were going back and
5 forth, you had already had the experience of sitting
6 with Mr. Nussbaum while he asked you questions about
7 the briefcase?

8 A Yes, I'd already had the meeting, yes.

9 Q Let me go to the next page. And this is
10 from you. Now again, to help you, the 27th of July
11 was a Tuesday. The text reads "On Wednesday, I told
12 Bernie that VWF had placed shredded remnants of
13 personal documents in the bag. On Thursday, I told
14 Bernie in front of everybody that shredded remnants
15 were in the bag." What did you mean by this?

16 A I don't recall sending this electronic mail
17 message. I can only speculate here that it possibly
18 could have been at the time that Bernie was
19 interrogating me about what I had seen, and it was my
20 practice to take all remnants of all whether it was
21 my personal documents or whether White House
22 documents and shred, tear them in half and place them

30

1 into a burn bag and not into a trash bag. I had once
2 told that to Vince that I put everything, all paper
3 into a burn bag.

4 Vince was, on that Monday before his death,
5 working on a lot of personal items, I could tell.
6 There was not a lot of official documents coming
7 out. And it is a possibility, but I don't recall, I
8 could have walked into his office and he could have
9 been tearing up something in his burn bag, but I just
10 do not recall that occurring.

11 Q But here in this E-mail you're
12 indicating -- and this, again, is within a week or
13 maybe eight days after his death. You are indicating
14 on Wednesday -- not the previous Monday, which was
15 yesterday, but "On Wednesday, I told Bernie that VWF
16 had placed shredded remnants of personal documents in
17 the bag. On Thursday, I told Bernie in front of
18 everybody that shredded remnants were in the bag."

19 Was this reference to "the bag" a reference
20 to the briefcase or to the burn bag?

21 A I'm not sure. I could only assume that
22 here I'm speaking of the burn bag since in the prior

1 message we were speaking about -- in the last
2 sentence about the burn bag.

3 Q All right. And do you remember having told
4 Mr. Nussbaum on Wednesday, which would be the 21st,
5 and on Thursday, which would be the 22nd, that
6 Mr. Foster had put shredded remnants of personal
7 documents in a bag?

8 A At this point in time I don't recall that,
9 but it's certainly written here, and possibly I had a
10 conversation with Bernie along with this
11 interrogation. He might have asked me what did he
12 work on that day, and it might have been that when I
13 had walked in his office, I don't recall, he might
14 have just been tearing up documents, tearing up
15 sheets of paper and placing them into his bag. That
16 might have been personal shredded remnants.

17 Q Do you know whether those would have been
18 placed in the burn bag or in his briefcase, the
19 things he was tearing up?

20 A I don't recall.

21 Q So I take it you're not sure whether the
22 reference to "bag" here in Z1213 is burn bag or a

1 reference to the briefcase?

2 A I believe the reference here would be to
3 the burn bag.

4 Q Now, let me go to the next page where
5 Ms. Tripp goes, in response to you, "I recall the
6 shredded talk, because when we spoke to" and again
7 it's a nickname for Mr. Neuwirth, "and he briefed us
8 on comportment and interrogation, you mentioned
9 that -- that was on Wednesday evening; right? So it
10 took until Monday to figure out it should be looked
11 at? Christ. And we're the support staff" with some
12 question marks after it.

13 Now, again to fix it in time, again this is
14 a memo or an E-mail as of Tuesday July 27th. On the
15 previous Thursday, which was the 22nd, you were
16 interviewed by the Park Police; correct?

17 A If that's the day I was interviewed. I
18 can't recall if it was Wednesday or Thursday.

19 Q And do you remember the night before the
20 interview by the Park Police Mr. Neuwirth and some
21 other lawyers of the White House counsel having a
22 discussion with you about the interviews that were

1 going to take place the next day?

2 A I remember Mr. Neuwirth being there and
3 possibly Mr. Nussbaum. I don't remember if other
4 lawyers were there.

5 Q Is that your understanding that that's the
6 reference to the Wednesday evening briefing on
7 comportment and interrogation?

8 A To the best of my recollection.

9 Q Now, do you remember during that discussion
10 with Mr. Neuwirth and possibly with Mr. Nussbaum the
11 evening before the Park Police interview further
12 discussion about shredded material?

13 A On that Wednesday?

14 Q Yeah.

15 A Evening? I don't recall if I -- if I said
16 anything that Wednesday night or not, or if I had
17 previously said that to Bernie in the two person
18 meeting between the two of us.

19 Q Well, the two-person meeting with the two
20 of you was not a meeting in which Linda Tripp was
21 present; right?

22 A That's correct.

1 Q And Mr. Neuwirth was not present?

2 A That's the best of my recollection he was
3 not.

4 Q And the two-person meeting would have been
5 on the Monday after you saw Mr. Neuwirth taking the
6 briefcase out of Mr. Foster's office; right?

7 A No, sir. The meeting would have been --
8 well, yes, I'm sorry. I'm thinking of the following
9 week. Yes, it would have been either that Monday or
10 Tuesday, yes.

11 Q So the reference here to "shredded talk"
12 during the briefing on comportment and interrogation
13 on Wednesday evening appears to -- you would agree
14 with me it appears to refer to some discussion that
15 occurred on the Wednesday evening before the Park
16 Police interviews?

17 A Yes, I believe so.

18 Q But you don't remember what is referred to
19 by "the shredded talk"?

20 A No, I'm sorry, I don't, unless she was
21 present at that meeting on the Wednesday I --

22 Q The Wednesday night meeting was the meeting

1 in anticipation of a Park Police --

2 A That's correct. And I don't recall -- I
3 don't recall at this time sitting there and saying
4 that to Bernie. I certainly might have, according to
5 these E-mail messages, but I just cannot recall that.

6 Q In other words, you are saying whatever is
7 in the E-mail messages you have no reason to doubt
8 was your memory as of the time they were prepared,
9 but you don't have an independent memory anymore?

10 A That's correct.

11 Q Except to the extent you have told us
12 things you remember?

13 A That's correct, and the speculation.

14 Q Was it your general sense at the time that
15 you learned something had been discovered in the
16 briefcase that you had previously seen something in
17 the briefcase before the discovery by Mr. Neuwirth?

18 A All I had seen out of the corner of my eye
19 was something yellow and the top of a three-cut
20 folder.

21 Q And what was the circumstance under which
22 you saw that?

1 A Mr. Neuwirth was in Mr. Foster's office on
2 the Monday following his death, and I had gone in
3 there one or two times, and at one time I saw
4 Mr. Neuwirth trip over the briefcase, the satchel,
5 that was affixed at the corner of Mr. Foster's desk,
6 and just simply out of helpfulness I took it and
7 moved it to the front of the office, leaned it
8 against the bar, just so he wouldn't keep tripping
9 over it.

10 Q Now, that wasn't the same day that you were
11 in the office with Mr. Nussbaum and Maggie Williams?
12 I take it that was a different day?

13 A The best that I can recall, it was, yes.

14 Q Do you remember -- I have a couple
15 questions. I have an incident or an occasion when
16 you were in Mr. Foster's office after his death when
17 you opened up his desk drawer and saw an insurance
18 policy?

19 A Yes.

20 Q Do you remember were you alone at that
21 point?

22 A No, sir I was not.

1 Q Who else was present?

2 A Mr. Nussbaum and Ms. Williams.

3 Q So it was during that period of time that

4 Ms. Williams and Mr. Nussbaum were in the room?

5 A That's correct.

6 Q And where were they at the point that you
7 opened the drawer?

8 A Mr. Nussbaum was seated at the front of the
9 desk in a club chair and Ms. Williams was standing
10 just beyond the table, standing up against
11 Mr. Foster's sofa.

12 Q What was the reason you opened the drawer
13 at that point?

14 A I really cannot recall why I did that at
15 that point. I don't know if I was simply opening --
16 I don't recall if I was opening it up to make sure
17 that they'd been through everything or that -- I just
18 don't recall why. I mean, I must have learned that
19 the Park Police had -- and they'd had this meeting
20 on -- whether it was Wednesday or Thursday, but I
21 just do not recall why I opened that desk drawer, you
22 know.

1 Q But it was on that occasion that

2 Mr. Nussbaum and Ms. Williams were in Mr. Foster's
3 office?

4 A Yes.

5 Q Now, is that the same occasion that
6 Mr. Nussbaum had called you in and asked you to help
7 him with a list or look at the -- find the way
8 through the list of Mr. Foster's files that related
9 to the President and the First Lady's personal
10 documents?

11 A He called me in, but I don't recall a list
12 that he asked me to help him go through.

13 Q What do you recall?

14 A I recall him asking me to tell him what was
15 in the drawer where the President and First Lady's
16 personal and financial matters folders were kept and
17 I did, and I opened up the drawer and started to read
18 to him the tops of the tabs for each folder that kept
19 these materials.

20 Q And at that point what did he do?

21 A After I read off just a very few titles, he
22 said never mind, we can do this ourselves.

1 Q And when you say "we," who else was with
2 him at that point?

3 A Ms. Williams was still there.

4 Q Now, did this event with the files occur
5 before or after you opened the middle drawer with the
6 life insurance in it?

7 A This occurred before.

8 Q Am I correct, then, that the -- you
9 opened -- let me withdraw the question.

10 Am I correct, then, that after you had gone
11 through this procedure with some of the file folders,
12 you left?

13 A I did.

14 Q And then at some time thereafter you came
15 back and you opened up the middle drawer?

16 A I did.

17 Q Why did you go back in, do you remember?

18 A No, I'm sorry, I do not. I do not recall
19 if Bernie called me become in for some reason.

20 Q But you remember those as being the
21 bookends of the same event?

22 A Absolutely.

1 Q Now, am I also correct that when you opened
2 the drawer -- I think we're actually done with the
3 E-mail. Well, I'll let you have them in case
4 Mr. Ben-Veniste has something. Am I also correct
5 that when you opened the drawer you noticed that
6 there was something that was missing, the drawer with
7 the personal files?

8 A That contained the President and First
9 Lady's -- yes, I did.

10 Q And what was that?

11 A I noticed that the index that I usually
12 placed in front of each file drawer was not there.

13 Q And do you remember the last time you had
14 seen that index previously?

15 A No, sir, I don't.

16 Q Was it your habit when you opened that
17 drawer to put something in to check the index?

18 A No, it was not.

19 Q Was it your practice to update the index
20 from time to time?

21 A I would update the indexes if we were to
22 have placed new folders in to make a new folder and

1 place a new folder in a drawer.

2 Q Would you update it if you removed a folder
3 if something was deleted and moved?

4 A No, sir, it would not have been my habit.

5 Q So in other words, your changes to the
6 index would occur when you -- when a new folder was
7 created?

8 A That's correct, a new addition to the
9 drawer.

10 Q Now, I'm going to show you just, I know
11 you've been through this procedure once before, I
12 think with Mr. Comey and Mr. Ivey, but I just want to
13 go through it again for the record. And I'll tell
14 you up front, the documents, I'll tell, you have this
15 SHC logo on it, just ignore that, that's just
16 something for the copies we use. But I'm going to
17 show you --

18 MR. BEN-VENISTE: We're going to go back
19 over the same areas that we went over before in the
20 earlier deposition now, Mike.

21 MR. CHERTOFF: I don't think this was in
22 the earlier deposition. I think that we --

1 MR. BEN-VENISTE: According to Glenn, it
2 was.

3 MS. FISHER: We didn't have the documents.

4 MR. CHERTOFF: We didn't have the documents
5 at the time. Maybe we'll go off the record and you
6 can consult with Mr. Ivey.

7 (Discussion off the record.)

8 MR. BEN-VENISTE: So the record will show
9 that she wasn't -- Ms. Gorham was, in fact, shown
10 these documents --

11 MR. CHERTOFF: Yes.

12 MR. BEN-VENISTE: -- during the time her
13 deposition was taken, but for some reason Mr. Comey
14 didn't put it on the record.

15 MR. CHERTOFF: No, they weren't shown that,
16 Mr. Ben-Veniste. They were shown that sometime after
17 the deposition when we came into possession of the
18 documents Mr. Comey and Mr. Ivey sat down with
19 Ms. Gorham at a time that she was reviewing her
20 deposition and showed her the documents. I believe
21 Mr. Ivey will confirm that. Am I right?

22 MR. IVEY: Yes.

1 MR. BEN-VENISTE: Okay. So they've been
2 shown before.

3 MR. CHERTOFF: Right.

4 Now, since this one doesn't seem to have a
5 Bates number, let me just mark this DG-1, please.

6 MR. BEN-VENISTE: But because I was under
7 the impression that the reason for this deposition
8 was to go over these E-mails, we haven't brought with
9 us all other documents. So if you don't mind showing
10 me what you are showing the witness, I would
11 appreciate it.

12 MR. CHERTOFF: I'll be happy to. I just
13 want to put it on the record and mark it.

14 (Exhibit DG-1 identified.)

15 BY MR. CHERTOFF:

16 Q I'm going to show the witness a series of
17 documents marked DG-1 which is a two-page 1. Why
18 don't we mark the second page DG-2?

19 (Exhibit DG-2 identified.)

20 MR. CHERTOFF: -- which I'm handing to
21 Mr. Ben-Veniste. And then there is Z1104 to 1123.
22 And then there is Z412 through 415. Z405 through

1 410.

2 MR. BEN-VENISTE: I'm sorry, are we marking
3 these?

4 MR. CHERTOFF: I'm just reading.

5 MR. BEN-VENISTE: I see one that says DG-1
6 and 2.

7 MR. CHERTOFF: I think it's in the record.
8 I marked that one because it doesn't have a Bates
9 number on it.

10 And finally Z632 and Z633. I'm passing
11 them to Mr. Ben-Veniste and when he's done looking at
12 them I just have a couple questions and I'll be
13 done.

14 (Pause.)

15 MR. MILLS: Mr. Ben-Veniste, after you
16 review each one, if I could see it, please?

17 MR. BEN-VENISTE: Sure.

18 (Discussion off the record.)

19 BY MR. CHERTOFF:

20 Q I'm going to show you -- now that you and
21 your attorney have had an opportunity to review some
22 of these documents, first I'm going to show you DG-1

1 and DG-2 and ask you if this is the index that you
2 had prepared.

3 (Witness reviewed the document.)

4 A No, sir.

5 Q You prepared that one -- I misunderstood
6 you. This is not the one you prepared?

7 A No, sir.

8 Q Let me now show you Z1109, and I'll state
9 for the record that in accordance with
10 Mr. Ben-Veniste's request I'm not just going to show
11 you redacted pages. So this is Z1109?

12 A And the question would be again,
13 Mr. Chertoff?

14 Q Is this the index which you had prepared
15 and which was typically left in the drawer of
16 Mr. Foster's office that contained the President and
17 First Lady's personal files?

18 A I cannot tell you if this is the index that
19 I prepared before Mr. Foster died. It's similar in
20 format, it's similar in type font, but it's not in
21 similar in format as in the line endings. Such as
22 there is a return after "1994 income tax return" and

1 after "Arkansas law residence." I normally don't
2 make hard returns after words -- as that of any
3 kind. I normally take it to the right margin. The
4 format looks the same in that the font looks the same
5 and some of the titles look the same, but I cannot
6 tell you if this is how it was last prepared by
7 myself.

8 Q Because I take it that typically when you
9 prepare it, the format that you use in terms of the
10 line return is a different format?

11 A Yes, sir, it is.

12 Q So then from that you can determine this is
13 not actually a document that you prepared?

14 A I can't tell you if it's a document I
15 prepared because -- I mean, I last saw documents -- I
16 last used -- I last worked on indexes prior to his
17 death, but this is certainly not even the type of
18 format with that type of right margin that I would
19 have used.

20 Q Okay. Now, let me show you Z1115 through
21 Z1117 and ask you again whether this was an index
22 that you prepared.

1 (Witness reviewed the document.)

2 A Mr. Chertoff, again this format or some of
3 this format is indicative of the type I use and the
4 type font, but I would never have used the word
5 "removed" after the end of phrases such as this
6 where -- these words and titles are familiar also.
7 At the end here it says "updated 10/25/93." I would
8 not have updated these documents after 7/20/93.

9 Q Okay. And finally I'm going to show you
10 Z1123 and ask you if that was a document you prepared
11 before Mr. Foster died, is that an index to the
12 drawer?

13 (Witness reviewed the document.)

14 A I can't tell you that this is a copy of the
15 exact document that I prepared prior to his death,
16 but these titles are certainly indicative of what was
17 contained in that drawer.

18 Q Can you tell whether this was a document
19 you prepared?

20 A The font is similar and -- the format is
21 similar, but I can't tell you that it is exactly what
22 I would have prepared since I don't know the

48

1 origination of this.

2 Q I guess what I'm asking is you had
3 testified earlier that there was an index which you
4 were looking for in the drawer on the -- on the day
5 that Mr. Nussbaum and Ms. Williams were present in
6 the room. And you opened the file drawer. Is this
7 that document?

8 A I can't tell you that this is that
9 document, but it is extremely similar in the titles
10 of the files that would have been contained inside.

11 Q But you don't know whether this is that
12 document or not?

13 A No, sir, I'm sorry. I don't know where you
14 received this or what --

15 Q I'm just asking whether you recognize it.

16 A I recognize the titles and the format and
17 the subjects.

18 Q When you prepared the index, I take it the
19 index you prepared was a complete index of everything
20 in the drawer?

21 A I prepared the indexes early in the spring
22 of 1993.

1 Q Which would be about when?

2 A I want to say the first week or two in
3 April of 1993, but as I believe I've testified
4 before, each and every time I went into that drawer I
5 did not match the index with what was still contained
6 in that drawer.

7 Q Did you -- as new files were created,
8 though, you created new indices or new entries?

9 A That would have been my procedure.

10 Q Now, let me show you Z632 and let me ask
11 you if this was the index that was in the drawer with
12 the personal Clinton files?

13 A No, sir. I've never seen this index
14 before.

15 Q Let me show you Z407 to Z410, and I'm going
16 to obviously direct your attention to the fact that
17 there's a date here of November 1993. I don't want
18 you to feel you're being tricked. I take it that
19 also is not the index that you had in Mr. Foster's
20 drawer containing the Clinton personal files before
21 he died?

22 A That's correct, sir, it was not.

1 Q And you might just page through all the
2 pages there and make sure there's nothing there that
3 is that index.

4 (Witness reviewed the document.)

5 A And we're still speaking of the drawer that
6 had the President and First Lady's personal financial
7 documents?

8 Q Right.

9 A This was not in that file drawer.

10 Q And finally let me show you Z413 to 415
11 which again ends updated 10/25/93, but I just want
12 you to take a look at it, and I take it that was also
13 not the index that was in the file drawer with the
14 Clinton's personal documents before Mr. Foster died?

15 A That's correct, sir, it was not.

16 Q So of all of the documents I've shown you,
17 the only one that you cannot rule out as being your
18 index that you had in the drawer marked -- drawer
19 containing Clinton personal files before Mr. Foster's
20 death is Z1123?

21 A Sir, I can only tell you that this
22 particular index is very similar to an index that I

1 prepared that would have contained some of these file
2 folders.

3 Q Do you know if the index you prepared
4 contained more file folders?

5 A I'm sorry, I don't recall.

6 Q And you can't tell whether this was one,
7 the one that you prepared before he died or not?

8 A No, I cannot tell you what point in time
9 that I worked for him that this, that the number or
10 names of the files this reflects is accurate.

11 Q And can you determine whether this was
12 something you would have prepared from the format?

13 A The format?

14 MR. BEN-VENISTE: She already answered
15 that.

16 MR. CHERTOFF: The format of the document.

17 MR. BEN-VENISTE: How many times are we
18 going to go over this, Mike? She said "extremely
19 similar," that's my notes of what she said.

20 BY MR. CHERTOFF:

21 Q Can I get your answer.

22 A Yes, sir, it's extremely similar, the

1 titles, the typeface that is used, the space between
2 the dashes.

3 Q Now, let me ask you finally, you kept this
4 on a hard drive?

5 A Yes, sir.

6 Q So that as of the time Mr. Foster died you
7 not only had a hard copy of the index that you
8 normally kept in the drawer with the Clinton personal
9 papers, but you also had a copy of that on your
10 computer?

11 A I had a copy on my computer at his time of
12 death. I don't recall that there was a copy of this
13 in his file drawer. There should have been, but I
14 could not tell you if there was one.

15 Q At least when you went in at the time that
16 Mr. Nussbaum and Ms. Williams were there and you
17 opened the drawer, you did not see your index?

18 A That's correct, I did not.

19 MR. CHERTOFF: That's all I have.

20 EXAMINATION

21 BY MR. BEN-VENISTE:

22 Q Let me follow up on that for a moment, if I

1 might, Ms. Gorham. If I understand your last answer
2 to Mr. Chertoff's question, you are unclear whether
3 at the time of Mr. Foster's death there even was an
4 index sitting in his file drawer?

5 A That is correct. I do not recall the last
6 time that it was updated.

7 Q And you knew that you had one on your
8 computer?

9 A Yes, sir.

10 Q But no one asked you to provide it?

11 A For --

12 Q For Mr. Nussbaum or, you didn't volunteer
13 and no one asked you about it?

14 A That's correct.

15 Q Okay. Now, Mr. Nussbaum -- Mr. Chertoff
16 showed you Z1109, and when you looked at Z1109 you
17 could tell that by reason of certain characteristic
18 indications on that document as compared with your
19 normal practice that this would not be a document you
20 would have prepared?

21 A That's correct for two reasons. One is the
22 right margin there's a hard return after the word

1 "tax" and the word "law license" even though it
2 pertains to the same file. If "returns" were a
3 separate file or "license" were a separate file, a
4 subfile, they would have been indented by two spaces.

5 Q Okay. Now, when the computer -- when you
6 retrieved this information from a computer, and you
7 print it out, would a computer -- would the computer
8 print it out in a different way than what appears on
9 that paper?

10 A No, sir. It should not have. Your type
11 fonts are set by default.

12 Q The information contained on Z1123 and the
13 information contained on Z1109 appears to me on a
14 very quick review to be virtually identical. Could
15 you check that to see whether my observation is
16 correct?

17 A Yes, sir, they're virtually identical
18 except for on the second line where the word
19 "returns" is hard returned after "income tax" and
20 then following "HRC-CLE/Arkansas law license" it's
21 not hard returned on one exhibit and it is on the
22 other exhibit.

1 Q And in terms of the actual words that
2 appear and the substance of what appears, they appear
3 to be virtually identical, is that an accurate --

4 A Yes, sir.

5 Q -- description of that material? So while
6 you are clear that Z1109 would not have been a record
7 except by you, you are equally clear that Z1123 does
8 in fact have all the idiosyncrasies of the way you
9 kept records that tell you that this is indeed a
10 record which you very well could have kept?

11 A Yes, sir, that's correct.

12 Q And do you have any reason to believe that
13 Z1123 was not prepared by you?

14 A No, sir, I don't.

15 Q Okay. Now, do you remember specifically
16 whether there was any occasion on which you updated
17 this list or schedule for Mr. Foster?

18 A As in an addition of a file.

19 Q Yes.

20 A I don't remember a specific event.

21 Q So if I understand your testimony, if
22 indeed there had been an occasion subsequent to the

56

1 creation of the original index when something was
2 added it would have been your practice to add that to
3 the index?

4 A Yes, sir, I would have had to have made
5 some type of folder and added it.

6 Q But you do not recall whether that ever
7 occurred?

8 A No, I can't today tell you when and if it
9 did occur.

10 Q Okay.

11 MR. MILLS: If I could ask, are you
12 referring to times when Deborah herself put new files
13 in or if anyone put new files in?

14 BY MR. BEN-VENISTE:

15 Q Well, do you know if anyone else ever put
16 new files into that particular folder?

17 A No, sir, because I wouldn't check what was
18 against the present index and what was already placed
19 in there. I would have been told by Mr. Foster that
20 he needed a file, and I would have made a file and
21 then updated the index.

22 Q So do you recall whether prior to the time

1 of his death there was anything that was added to
2 that file drawer?

3 A To the best I can recall, it would only be
4 an assumption that possibly the Arkansas bar license
5 or the blind trust were added, but I'm just not sure
6 about that.

7 Q Is it possible that you were in the process
8 of updating this list at the time that Mr. Foster
9 died?

10 A It's a possibility, and there could have
11 been a lag time, but I just don't recall.

12 Q Okay. Do you recall anything that was in
13 that file drawer that is not reflected on this list?

14 A I remember a folder in that file drawer,
15 and it's not on that list.

16 Q Which one was that?

17 A It's entitled "Whitewater."

18 Q And did you type up a list that said
19 "Whitewater" on it?

20 A I can't recall if I did or did not add that
21 or not simply because when I started the indexing or
22 organizing of his office it was very early, early in

1 that spring when I arrived.

2 Q So you don't recall one way or the other?

3 A I only recall the folder being in there at
4 the time that I started to organize his office.

5 Q Now, the questions about the E-mails of
6 July 27th, let me ask you first whether you mentioned
7 to Ms. Tripp that following the hurried events of
8 July 26th that you observed that you had been
9 questioned by Mr. Nussbaum?

10 A I'm sorry, could you rephrase that for me?

11 Q Surely. Do you remember telling Ms. Tripp
12 that Mr. Nussbaum had questioned you after
13 Mr. Neuwirth had discovered whatever he discovered?

14 A I don't recall if we had a conversation or
15 not.

16 Q But if I understand your testimony, you
17 observed Mr. Neuwirth rather excitedly departing
18 Mr. Foster's office carrying Mr. Foster's briefcase
19 which you've referred to as a briefcase or a bag or a
20 satchel; correct?

21 A That's correct.

22 Q And that he rushed into Mr. Nussbaum's

1 office, and Mr. Nussbaum apparently wasn't in the
2 office so then he tried to locate him with some
3 urgency. It's clear that he had discovered
4 something; correct?

5 A That's correct.

6 Q And did you, from the fact that he was
7 carrying Mr. Foster's briefcase, make an assumption
8 that whatever he discovered had been in that
9 briefcase?

10 A No, I think it would only be fair to assume
11 that it was connected in some way with that
12 briefcase.

13 Q Okay. And you don't recall whether
14 Ms. Tripp was in the office at that time or whether
15 her information about all this came from you or
16 someone else?

17 A I'm sorry, about -- do you remember if
18 Linda was in the office?

19 Q At the moment that Mr. Neuwirth had engaged
20 in the activity you've described?

21 A No, I can't remember if she was there at
22 that moment or not when they went back and forth.

60

1 Q But you would not have been hesitant in
2 repeating to her what had happened?

3 A I believe I did in this electronic mail
4 message.

5 Q And you think you might have even before
6 this electronic mail message on the day before?

7 A I think I would only speculate whether I
8 did or did not.

9 Q Okay. Let me ask you, at the time of
10 Mr. Foster's death, how many burn bags were there in
11 the White House counsel's office altogether?

12 A I don't recall the exact number. Vince
13 kept a burn bag in his office, I kept a burn bag
14 behind my chair. I can't recall if the other
15 assistants in the office had their own burn bags or
16 not.

17 Q And how about Mr. Nussbaum, did he have
18 one?

19 A I don't recall if he kept one or not.

20 Q Now, when you talked to Mr. Nussbaum
21 following Mr. Foster's death about Mr. Foster's
22 habits, I believe you've testified that you told

1 Mr. Nussbaum that he was in the habit of tearing up
2 material and placing it in a burn bag?

3 A No, sir. I didn't have that conversation
4 with him that he was in the habit of doing that. I
5 was in the habit of tearing up documents into my burn
6 bag.

7 Q Okay. I misunderstood you then. Could you
8 go back and tell me what it was that you discussed
9 with Mr. Nussbaum following Mr. Foster's death?

10 A To this day I don't recall all the
11 conversation that took place, but I was -- what is
12 totally vivid in my mind is the interrogation by
13 Mr. Nussbaum, the constant questioning of what I saw
14 in his bag, did I see anything in his bag. And of
15 course I told him at a glimpse out of the corner of
16 my eye I had seen a glimpse of color and the top of a
17 gold, three-cut folder. He wanted to ask me what did
18 it look like, what was the shape. I continued
19 responding in the same manner.

20 Q He was eager to get his questions out and
21 get your answers?

22 MR. CHERTOFF: Objection; calls for

1 speculation.

2 MR. BEN-VENISTE: Overruled.

3 MR. MILLS: You can answer.

4 BY MR. BEN-VENISTE:

5 Q You may answer.

6 MR. MILLS: Did he seem eager to you?

7 THE WITNESS: I would say he seemed more
8 than eager, he was very adamant to learn if I knew
9 anything else.

10 BY MR. BEN-VENISTE:

11 Q Could you provide any further information
12 about what you had seen?

13 A In the?

14 Q In the briefcase?

15 A No, sir, I could not.

16 Q I mean, this was Mr. Nussbaum's motive as
17 far as what you could tell from the way he was asking
18 the questions?

19 A Yes, sir.

20 Q He asked you what was the shape of the
21 papers?

22 A I don't recall if he asked me that

1 specifically. I just -- I simply recall did you see
2 anything else -- well, I'm sorry he might have asked
3 me what did it look like, was it paper, what were the
4 shapes.

5 Q And when you said -- I guess you said you
6 saw something yellow?

7 A Yes.

8 Q I guess then did you answer as to whether
9 it was paper or not, what was your --

10 A I simply kept responding the same answer
11 and that was I only saw yellow, Bernie, and the top
12 of a gold, three-cut folder.

13 Q And I guess he asked you whether you could
14 see whether there was any writing on the yellow?

15 A I don't know if he did or not. If he did I
16 simply would respond the same way. That's all I saw
17 was the color yellow.

18 Q All you saw was the color yellow?

19 A Yes.

20 (Discussion off the record.)

21 BY MR. BEN-VENISTE:

22 Q So what do you -- let's now turn from the,

1 from your recollection of Mr. Burn -- Mr. Nussbaum's
2 questions to you, now I'm picking it up from Senator
3 who was that?

4 MR. MILLS: Oh, I know.

5 MR. BEN-VENISTE: Who?

6 (Discussion off the record.)

7 BY MR. BEN-VENISTE:

8 Q Turning from the conversation where
9 Mr. Nussbaum questioned you about having seen
10 something yellow in the briefcase to anything that
11 you recall having been discussed about either your
12 practices or Mr. Foster's practices regarding burn
13 bags, what do you recall following Mr. Foster's death
14 either saying to Mr. Nussbaum or others about either
15 your practice or Mr. Foster's practice of using burn
16 bags?

17 A As of today, I don't recall if we had a
18 conversation about that, but it appears obvious that
19 we must have according to these electronic mail
20 messages.

21 Q So the electronic mail messages don't
22 refresh your recollection?

1 A No, I'm sorry, they do not.

2 Q Now, let's go to the question of what in
3 fact your practice was with regard to the use of burn
4 bags.

5 A I place in my burn bag everything that I
6 considered was not trash. And trash was my lunch
7 tray, a coffee cup, any personal items that I had, a
8 personal letter, an envelope. Any documentation from
9 the White House that was to be considered trash I
10 tore in halves or quarters and placed in my burn bag.

11 Q And what, if anything, did you observe as
12 being Mr. Foster's practice if he had a practice?

13 A There is one practice that I always noted
14 that he was kind of a pitch-and-toss kind of guy. He
15 would roll things up and throw them.

16 Q Go for the two points you mean?

17 A I suppose, yes.

18 Q And was his objective the trash can or the
19 burn bag in these?

20 A I don't recall which or which container
21 that he was trying to use.

22 Q I take it you knew from the misses rather

66

1 than the hits?

2 A Oh, no, I guess I really didn't. I recall
3 he was pretty neat and didn't leave trash on the
4 floor.

5 Q But with respect to use of the burn bag
6 versus the trash bag, then, I take it you observed no
7 particular practice on his part?

8 A I was only -- that I can recall, I can only
9 recall the pitch and toss, but I could not tell you
10 if he also at this point in time, you know, shredded
11 documents or left them whole in his burn bag.

12 Q Now, when you talk about shredding
13 documents, if I understand your testimony and the
14 visuals that accompany them by your gestures, you
15 mean that when someone rips up a document, tears it?

16 A That's right, tears it.

17 Q You have referred to that as shredding it?

18 A That's right. Tears it in half or in
19 quarter.

20 Q All right. Now, had you observed
21 Mr. Foster tear up pieces of paper before -- strike
22 that.

1 Had you ever observed Mr. Foster tear up
2 pieces of paper?

3 A I don't recall today. I cannot recall if
4 he tore up pieces of paper or left them whole. I
5 only recall the pitching.

6 Q Okay. Obviously if he had torn them up
7 it's unlikely he would then have pitched them I take
8 it?

9 A Sure, yes, sir.

10 Q Do you have any recollection of looking in
11 Mr. Foster's office subsequent to his death to
12 determine whether there was anything in his burn bag?

13 A As I'm recalling today I do not recall.

14 Q If you had a conversation with anyone at
15 the White House office, counsel's office, following
16 Mr. Foster's death where you had specifically called
17 attention to any material in the burn bag, would that
18 be something you would forget?

19 A Well, it's been two years. It's been a
20 long time, and I've tried to put a lot of this away.
21 I'm sorry. Could you repeat that question?

22 Q Essentially I'm asking you whether if you

1 felt that there was something important in
2 Mr. Foster's burn bag and had called that observation
3 to someone's attention, would it be likely that you
4 would have forgotten that now?

5 MR. CHERTOFF: I think it's kind of an
6 impossible question to answer, but I guess if the
7 witness --

8 MR. BEN-VENISTE: Far less impossible than
9 some of the ones you've posed.

10 MR. CHERTOFF: It's really useless for you
11 to challenge me on the record. If the witness feels
12 she can answer it she can.

13 MR. BEN-VENISTE: If she remembers this
14 question now that we've had this interesting
15 colloquy. Do you remember the question?

16 MR. MILLS: Just so I understand the
17 question. It's whether she thinks it's likely that
18 she would remember today whether she had told
19 somebody about something important two years ago.

20 BY MR. BEN-VENISTE:

21 Q Regarding this subject matter of the burn
22 bag and its contents?

1 A As of today, I don't know if I would
2 have -- I don't know that I can recall that.
3 Certainly the electronic mail messages reflect that
4 this conversation took place, but there are things
5 that are very vivid in my memory, and there are
6 matters such as recalling the conversation today
7 about that that I just don't recall.

8 Q You understand we're trying to do our very
9 best in extracting from you your very best and most
10 accurate recollection of these events?

11 A Certainly.

12 Q So if this seems a bit tedious I apologize
13 for it. With respect to your speculation about what
14 Ms. Tripp might have been thinking about when she
15 said on Exhibit 1209 "and had to do I presume with
16 the burn bag," and I'll show that again to you.

17 As you sit here, do you know of any reason
18 why Ms. Tripp made that presumption at that time in
19 that E-mail?

20 A No, sir, I don't.

21 MR. BEN-VENISTE: I have nothing further at
22 this time.

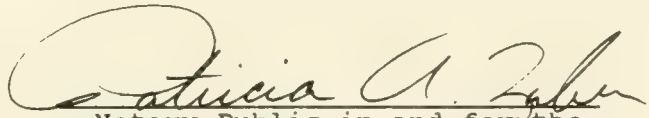
70

1 MR. CHERTOFF: I have nothing further.
2 Thank you.
3 (Whereupon, at 3:30 p.m., the deposition
4 was concluded.)

DEBORAH GORHAM

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I, PATRICIA A. ZUBER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
District of Columbia

My Commission Expires FEBRUARY 14, 2000

**EXHIBIT DG-1 WAS NOT PROVIDED
IN TIME FOR PUBLICATION**

**EXHIBIT DG-2 WAS NOT PROVIDED
IN TIME FOR PUBLICATION**

**DEPOSITION OF LINDA R. TRIPP
IN RE: S. RES. 120**

MONDAY, JULY 31, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of LINDA R. TRIPP, called for examination pursuant to notice of deposition, at 3:42 p.m. in Room 534 of the Dirksen Senate Office Building, before PATRICIA A. ZUBER, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, Esq.
Majority Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
GLENN F. IVEY, Esq.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

KIRBY D. BEHRE, Esq.
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC 20004-2400
On behalf of the Deponent.

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------|-------------|
| Linda R. Tripp | |
| by Mr. Chertoff | 3 |
| by Mr. Ben-Veniste | 41 |
| by Mr. Chertoff | 55 |
| by Mr. Ben-Veniste | 61 |

1 PROCEEDINGS

2 Whereupon,

3 LINDA R. TRIPP

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. CHERTOFF:

8 Q Ms. Tripp, you are back again. Obviously
9 you've been through the initial procedure. So I'm
10 not going to repeat it. We've called you back
11 because we have recently, since your deposition,
12 received copies of E-mail traffic which is between
13 you and Ms. Gorham that occurred on the 27th of July,
14 1993. And what I'm going to do is I'm going to give
15 you a copy, and let me ask you first, have you had an
16 opportunity to see this E-mail traffic before today?

17 A I have, yes.

18 MR. BEHRE: Do you have an extra set?

19 MR. CHERTOFF: We just have the two.

20 BY MR. CHERTOFF:

21 Q Am I correct that this was furnished you by
22 the White House?

4

1 A This was furnished to me by my counsel,
2 Kirby Behre.

3 MR. CHERTOFF: If counsel could indicate,
4 did you get this from the White House?

5 MR. BEHRE: Yes, I did.

6 MR. CHERTOFF: Just take a moment to kind
7 of take a look.

8 (Witness reviewed the document.)

9 BY MR. CHERTOFF:

10 Q Let me direct your attention back to the
11 27th of July, 1993, and to help you fix it in time a
12 little bit, this is the day after Mr. Neuwirth
13 emerged from Mr. Foster's office with Mr. Foster's
14 briefcase, and I guess at around that time it was
15 indicated that some torn-up paper was found at the
16 bottom of the briefcase on that day.

17 MR. BEN-VENISTE: I don't think there is
18 any testimony to either of those two things involving
19 this witness.

20 MR. CHERTOFF: I'm just placing it in time.

21 BY MR. CHERTOFF:

22 Q If it's helpful. If it's not helpful,

1 obviously you can disregard it.

2 Let me now ask you. Directing your
3 attention to July 26th and July 27th, when did you
4 first become aware that Mr. Neuwirth had indicated to
5 someone that he had discovered papers on the 26th or
6 torn-up pieces of paper on the 26th of July in
7 Mr. Foster's briefcase?

8 A Sir, I'm unclear as to what you are trying
9 to determine right at this point. Do you want to
10 know when I was told that he found something?

11 Q Yes.

12 A Or when I was told that he found little
13 pieces of paper?

14 Q When did you first find out that he found
15 something?

16 A That was on the 26th, sometime during the
17 day when he stuck his head out of Bernie's office,
18 which has been my recollection consistently, and
19 asked me to locate Bernie and have Bernie return to
20 the office.

21 Q And what happened next?

22 A Then I either called down to Mack --

1 Mr. McLarty's office or paged Bernie, and I'm not
2 certain which method I used at the time to have
3 Bernie return immediately to the office.

4 Q And then what happened?

5 A Prior to my putting in the page or calling
6 Mack's office, I said to Steve, you've found
7 something, haven't you. And he said yes. And then
8 at that point I placed the call or the page and
9 Bernie rushed to the office.

10 Q And then what happened?

11 A I don't have an independent recollection of
12 what happened in what sequence then. In reading the
13 electronic message traffic, my memory is refreshed
14 somewhat.

15 Q Okay. Tell us your memory.

16 A I do recall Bernie returning. I do recall
17 Bill Burton arriving. I assumed he had been asked.
18 I don't recall him being escorted in. I do recall
19 feeling he was expected, and a lot of activity during
20 that time, but the door stayed shut.

21 Q In other words, people coming in and out of
22 Mr. Nussbaum's office, but the door being shut

1 otherwise?

2 A Yes.

3 Q Did anybody else come up that you recall
4 besides Mr. Burton and Mr. Nussbaum?

5 A I didn't have an independent recollection
6 of anyone else.

7 Q Have you now refreshed your memory that
8 someone else came up?

9 A Yes, sir. In previous testimony I'd said
10 that Mrs. Clinton had come in at one point, I was
11 unclear as to time frame, into Bernie's office and I
12 believe from what I have since read, that it was
13 during that specific time frame.

14 Q What do you remember about that?

15 A An obvious heightened sense of tension. I
16 remember Bernie being flustered. I remember
17 Mrs. Clinton seeming subdued. She went directly into
18 Bernie's office, and we had no conversation. She
19 seemed to act as though one might expect someone to
20 act who had lost a dear friend.

21 Q And then what happened?

22 A The door stayed shut for a great deal of

1 time. I don't recall who left and when and in what
2 order. I stayed late that evening after Bernie had
3 requested that I do so. So what do you mean
4 further?

5 Q Do you remember, for example, how long
6 Mrs. Clinton stayed in?

7 A I really don't remember for what length of
8 time.

9 Q Why did Mr. Nussbaum ask you to stay late?
10 MR. BEHRE: I want to caution the witness.
11 If she knows the answer to questions such as that,
12 she can give them, but how anybody would know what
13 somebody else intended, it's beyond me.

14 BY MR. CHERTOFF:

15 Q I'll rephrase the question. Did he give
16 you a reason why he asked to you stay late?

17 A Just that I might be needed.

18 Q And were you needed for something?

19 A For the most part, no. I stayed in the
20 outer office.

21 Q At any point did you have any discussion
22 with Mr. Nussbaum?

1 A I don't recall if he came back out and we
2 had a discussion at that point or not. At one point
3 we did discuss my cab home. I don't recall what
4 portion of the day that was or in the evening.

5 Q Did you have any discussion with him other
6 than about your cab home?

7 A To be candid, I am uncertain in my mind
8 when I found out what was found was found or where it
9 was found. I don't know if it was that evening when
10 I asked directly or if it was the following day. I'm
11 not clear.

12 Q At whatever time it was, whether it was
13 that evening or the following day, did you have a
14 conversation about what was found in the briefcase?

15 A Yes, sir.

16 Q Who did you have that with?

17 A I believe I asked Bernie directly.

18 Q And what did he say to you?

19 A It's my recollection that he said there was
20 a letter, a torn letter. He did not reveal its
21 contents at that time, and I believe he said it's
22 sad, it's just so sad. I remember that.

10

1 Q Anything else?

2 A No.

3 Q Did there come any point that evening of
4 the 26th or the following day that Mr. Nussbaum
5 called you in and asked you questions about whether
6 you had seen anything in the briefcase?

7 A I don't recall any questions to me directly
8 about a briefcase.

9 Q Do you remember him questioning anybody
10 else about the briefcase?

11 A I don't know. I'm not -- I'm not certain
12 if I, if I do recall that or not.

13 Q Would it help to refresh your memory if I
14 asked you whether you learned that he had brought
15 Deborah Gorham into his office to question her about
16 what she'd seen in the briefcase?

17 A Are we talking, on what day?

18 Q Either Monday or Tuesday of that week.

19 A I believe that was not the first time that
20 Deborah was shown the briefcase.

21 Q Okay. Tell me what you remember about any
22 occasions on which Deborah Gorham was shown the

1 briefcase.

2 A Shortly after Vince died, and I'm unclear
3 as to whether it was the following day or the day
4 following that, Bernie and Deborah went into
5 either -- either Bernie's or Vince's office and I'm
6 unclear what, but Bernie asked Deborah to accompany
7 him, and they were in there for quite some time.
8 When they came out, Bernie went back into his office
9 and closed the door. Deborah came out sort of
10 looking confused, and I said did you find anything.
11 Were you looking for a note, did you find a note.
12 She said no, nothing. And I said did you look
13 everywhere.

14 And please all of you bear in mind that
15 this was an extremely traumatic time. I know you've
16 heard this over and over again, but I really feel
17 it's worthwhile to emphasize. That even those of us
18 who knew him for a very, very short period of time
19 were traumatized by this.

20 I said again, did you look everywhere, did
21 you look everywhere. She said yes. I said did you
22 look in his briefcase. And she said it was empty

12

1 except for a bunch of little yellow sticky notes at
2 the bottom.

3 Q And did she say anything else about it?

4 A No, sir.

5 Q Now, this occurred before you-all went to
6 Arkansas for the funeral?

7 A My conversation with Deborah?

8 Q Yes.

9 A I believe it did, yes.

10 Q Do you remember the day on which the people
11 from law enforcement went into the office and -- into
12 Vincent Foster's office with Mr. Nussbaum to be
13 present when documents were looked at?

14 A I have never been clear as to what day that
15 was. I do recall that happening.

16 Q Was this conversation with Ms. Gorham on
17 that day?

18 A I'm just not sure, sir.

19 Q So what we can say is it's between the time
20 Mr. Foster died and the time that you went to the
21 funeral in Arkansas?

22 A Yes, sir.

1 Q Was this occasion when Deborah Gorham and
2 Mr. Nussbaum were in one of the offices behind closed
3 doors an occasion when Margaret Williams was present?

4 A I don't know.

5 Q Do you remember an occasion that Margaret
6 Williams was present with Mr. Nussbaum and Ms. Gorham
7 in Mr. Foster's office?

8 A I just don't have a clear recollection of
9 that.

10 Q Now, you said that was the first time that
11 you understood that Ms. Gorham looked at the
12 briefcase. Tell me, now to go toward in time, when
13 was the second time that you learned that Ms. Gorham
14 had been shown the briefcase?

15 A Well, let me be careful. When you say "has
16 been shown," I'll go now to the electronic
17 transmission of the 27th, which I believe followed a
18 conversation that we had about whatever it was that
19 had been found. And let me preface this by saying,
20 and I think it's important, these are our
21 speculations on trying to come to some sort of
22 conclusion as to what might have, what happened to

1 prompt this tragic death.

2 I'm not certain where we started before
3 this, but I believe we were discussing that
4 something, maybe it was a letter, I'm not certain
5 where we were at that point, had been found, and
6 questioning one another as to where, since it was now
7 the 26th, that whatever had been recovered was
8 recovered.

9 In her first transmission to me, she
10 indicates everything from his briefcase is missing.
11 I interpreted that at the time, and still, to
12 indicate to me that she was aware of what should have
13 been in there or at least what was at one point in
14 there, and that it was no longer the case.

15 Q Did this follow upon an occasion in which
16 Mr. Nussbaum had called Deborah Gorham into his
17 office and shown her the briefcase or asked her about
18 what was in the briefcase?

19 A That is my thought, but it's a fuzzy
20 thought. I think that's how we got to the next step.

21 Q Okay. All right. So it begins with her
22 indicating to you everything in his briefcase is

1 missing. Then following along with the E-mails, if
2 you can just kind of explain what's going on to us.

3 A Okay. Can I first make a statement about
4 these copies that we all have?

5 Q Sure.

6 A This is not the format that I am familiar
7 with for printing out White House electronic mail
8 transmissions. In fact, it doesn't look anything
9 like any electronic mail transmission that I've ever
10 printed out in my years at the White House.

11 Q How does it differ?

12 A It's totally foreign to me. It doesn't
13 look like electronic mail transmissions. I may have
14 some pay records or something at home that I can pull
15 out to make -- I didn't know what this was when I saw
16 it. An electronic mail transmission from our White
17 House, what at the time I believe was local area
18 network, was totally different from this.

19 I'd also like to just say that upon
20 initially seeing them, I didn't recognize them. Upon
21 initially reading the first little bit, I was still a
22 little unclear as to whether these could be mine and

1 went a little further and realized that they most
2 certainly did sound like me, and so I don't dispute
3 that I wrote these at all.

4 I am not certain, however, that I can
5 confirm the date nor am I certain that these are
6 verbatim, and I'm less certain that they are
7 complete.

8 Q Okay.

9 A So --

10 Q With all that, let's -- and you know,
11 recognizing, you know, what you've said about them,
12 let's try to go through them and tell us what this
13 conversation is, what you recall.

14 A From the beginning?

15 Q Yes.

16 A From what I've been able to reconstruct in
17 my own hazy memory, I believe at this point we must
18 have had some information about something being
19 found. What, where, I assume we're going back to the
20 Steve Neuwirth sticking his head out time frame. So
21 that we were aware, and I think there was speculation
22 as to what was found, was it found in the briefcase,

1 was it found in a burn bag, where did it appear from
2 at this late date which I think prompted E-mail
3 number 1. So would you like me to walk you through
4 each?

5 Q Right. Walk us through it.

6 A Okay. My response appears to be --

7 MR. BEHRE: Just reference the page
8 numbers, it might be helpful.

9 THE WITNESS: Okay. The first one was --

10 BY MR. CHERTOFF:

11 Q Z 1206.

12 A Yes, sir.

13 Q And the next one is 1207.

14 A My question to her was in reference to my
15 previous knowledge from Deborah which was the
16 briefcase was empty except for a bunch of little
17 yellow sticky notes. I say "or was there more?"

18 Q And this "yellow sticky" reference reflects
19 back to the previous week where Deborah Gorham had
20 indicated to you she'd seen something yellow?

21 A Yes, absolutely.

22 Q All right.

1 A There was Deborah Gorham's transmission to
2 me, and that is number 1208. Where she references,
3 "I do not know what else was in there." I assume
4 that meant in addition to the little yellow stickies,
5 "but the bag is totally cleaned out except for one
6 collar stay."

7 It was my interpretation of this, that the
8 bag meant the briefcase, still referring to the
9 location of the little yellow sticky notes.

10 Q Was it your understanding at this point
11 that someone very recently had shown Ms. Gorham the
12 briefcase?

13 A Yes, sir.

14 Q And that at that point it was empty?

15 A Yes, sir.

16 Q Go ahead.

17 A Okay.

18 Q I know there is a nasty reference to
19 someone. I take it that's Mr. Neuwirth?

20 A Yes, sir, it is.

21 MR. BEHRE: If I could just clarify your
22 characterization. I think the witness testified

1 that, not that the bag was empty. It was empty
2 except for --

3 MR. CHERTOFF: A collar stay.

4 MR. BEHRE: And if you read in conjunction
5 with the prior one, the yellow sticky.

6 THE WITNESS: That's gone now.

7 BY MR. CHERTOFF:

8 Q Let's make sure we're clear on this. My
9 understanding on this, if you go back to 1207, that
10 in an earlier point in time there was a reference to
11 a little yellow sticky being in the bag. But that as
12 of the time of this transmission on 1208, Mr. --
13 Ms. Gorham is saying that she doesn't know what else
14 was in there, but the bag is totally cleaned out as
15 of this point?

16 A That's how I understood it.

17 Q Okay. Now on to 1209.

18 A Why don't I let you ask me questions about
19 this one.

20 Q You go on to say "it seems that whatever
21 was uncovered was uncovered by --" and there's a
22 reference to somebody, who I take it is Mr. Neuwirth?

20

1 A Yes, sir.

2 Q "Who summoned our boss, who then summoned
3 BB," is that Mr. Burton?

4 A Yes, sir, it is.

5 Q "Who then summoned H," who, am I correct,
6 is the First Lady?

7 A Yes, sir.

8 Q "And whatever it was provoked a need for
9 note taking and had to do, I presume, with the burn
10 bag. I can't imagine that anyone as meticulous as
11 this individual was, would have left anything he did
12 not intend to be found."

13 Now, focusing on this, is the first part of
14 this up until the reference to note taking your
15 recollection as of what had happened the previous
16 evening in terms of people coming in and going into
17 Mr. Nussbaum's office?

18 A Yes. I'm not sure of the time frame, but
19 it was the previous afternoon, evening, whenever it
20 was.

21 Q And is the sequence Mr. Neuwirth is the one
22 who uncovers it, who summons Nussbaum and then Burton

1 comes and then the First Lady comes?

2 A Yes, sir.

3 Q What is the reference to "whatever it was
4 provoked a need for notetaking"?

5 A Well, I had to think about that to have a
6 sense in my mind as to what I meant, and I can only
7 give you what my interpretation today is on my
8 two-year old transmissions.

9 The night before in the counsel's office in
10 the west wing, the night that I had been asked to
11 stay, I don't recall anyone else being outside the
12 counsel's office, meaning in the support staff
13 suite. And at one point Cliff Sloan came out and
14 asked for a typewriter, and we had a discussion about
15 the need to remove a typewriter and bring it into
16 Bernie's office when there were five computers
17 sitting right there and two typewriters which would
18 be very difficult to disengage, cables under heavy
19 furniture and intermingled with computer wiring
20 cable.

21 I had offered to do whatever it was that
22 needed to be done. He declined, and I offered to get

1 a typewriter from a different location that was not
2 so heavily entwined under massive furniture, and he
3 declined as well. He went back in the office, and it
4 was never raised again. I think that is to what I am
5 referring in this paragraph.

6 Q Did Mr. Nussbaum have a terminal with a
7 typewriter in his office?

8 A No, sir, to the best of my recollection he
9 did not.

10 Q Did you -- this discussion with
11 Mr. Neuwirth concerning using a typewriter as opposed
12 to using something that was hooked up to the
13 terminal, can you elaborate on what that discussion
14 was?

15 A It was relatively brief. He wanted to take
16 a typewriter and bring it into Bernie Nussbaum's
17 office, and I don't remember verbatim what was said
18 and who, what. I know I led him to believe that that
19 would be difficult. I questioned why when we had the
20 computers right there. I was ready to do anything
21 that was needed. And I guess you'd have to see the
22 configuration of the office to realize why moving two

1 essentially normal size typewriters would be a big
2 deal, but everything was commingled under the desks
3 and taped to the floor and extremely difficult to
4 move. When we wanted things moved, we called the
5 staff responsible for that.

6 Q Am I correct that the impression you formed
7 was that whatever he wanted to type he wanted to type
8 in that office with the door shut rather than out in
9 the area where you were present?

10 A I just know he wanted a typewriter to take
11 in with him.

12 Q Now, going on further, "and had to do I
13 presume with the burn bag."

14 And it may help you actually in terms of
15 answering what that reference is to. Go ahead and
16 read to yourself 1210 and 1211 where there's another
17 reference to the burn bag.

18 (Witness reviewed the document.)

19 BY MR. CHERTOFF:

20 Q Before you do that, let me make sure I
21 correct my own misstatement. I believe you testified
22 it was Cliff Sloan who wanted the typewriter?

1 A Yes, sir, I was just going to say that.

2 Q You caught me. Just to nail it down, it's
3 Mr. Sloan who was in there?

4 A It is my recollection that they were both
5 in there, which I don't believe I have told you that,
6 but it was -- I'm quite certain it was Mr. Sloan who
7 I had this conversation with.

8 Q Okay. All right. Now, go ahead reading
9 ahead, and then I'm going to come back and ask you
10 about this line on 1209, "and had to do I presume
11 with the burn bag."

12 A My sense on the "and had to do I presume
13 with the burn bag," was that at that point I
14 certainly don't believe I was aware where whatever
15 was found was found, whether it was in a burn bag or
16 another sort of bag or a drawer. At that point I
17 didn't know.

18 And there had been discussion about burn
19 bags. It had always been my understanding that he
20 didn't have one simply because he so frequently used
21 mine which may well have been incorrect. So I think
22 this was sheer speculation on our part.

1 Q Now let me go to the next page and it's
2 Deborah Gorham's. "What provoked COS," and I take it
3 COS was another reference to Mr. Neuwirth?

4 A Yes, sir, I believe so.

5 Q "To call BWN," that's Mr. Nussbaum?

6 A Yes, sir.

7 Q "Was the briefcase. Once BWN arrived, I
8 forgot who went into VWF's office to get the burn
9 bag. But they must feel like a slapstick comedy by
10 not returning the burn bag along with the
11 briefcase."

12 Returning to the reference to slapstick,
13 what does this refer to in terms of the movement of
14 the briefcase and the burn bag on that night?

15 A Well, again, this is a Deborah Gorham
16 originated transmission. I don't know what she meant
17 so much as what I thought she meant. I believe what
18 she was telling me was that they had retrieved a burn
19 bag from -- and an unknown person apparently had
20 retrieved a burn bag from Vince's office, taken it
21 into Bernie's office to sort through, perhaps to find
22 a note, and apparently from what I understood from

26

1 this message, forgot to return it along with the
2 briefcase when the briefcase went back to
3 Mr. Foster's office.

4 Q Do you remember seeing that night someone
5 bringing a burn bag out of Mr. Foster's office?

6 A I don't.

7 Q Do you remember seeing someone bringing a
8 briefcase out of Mr. Foster's office?

9 A I just don't have an independent
10 recollection of movement.

11 Q Now, going on to 1212, this is you. You
12 go, "the Three Stooges. But why on God's green earth
13 would the burn bag not have been sifted through
14 immediately, not days later? And of course it would
15 be secured along with all else and not left hanging
16 around in an unsecured area."

17 What did you mean by that?

18 A I believe this is speculation on my part,
19 again, that had whatever been found been found in the
20 burn bag, that this certainly should have been
21 something that we were aware of many days earlier.
22 The portion concerning the burn bags being secured or

1 not, left hanging around in an unsecured area, I
2 believe I was referencing the burn bag not being in
3 Vince Foster's now key-locked section of the
4 counsel's suite. I'm fairly unclear on this. I
5 believe that's my best recollection based on this
6 transmission.

7 Q Because you didn't know where Mr. Foster's
8 burn bag had been kept as of this point in time?

9 A I was unaware that he had one.

10 Q So is it fair to say that as of this point
11 in time you didn't know whether whatever was found
12 was found in the briefcase or in the burn bag?

13 A I don't know if I knew it or not. Based on
14 this I would say it looks like I was not sure where
15 it was found.

16 Q What you did know at this point, though, or
17 had been told at this point was that the week earlier
18 Deborah Gorham had seen what looked like yellow
19 stickies in the briefcase?

20 A In the bottom of the briefcase.

21 Q Now, let me go over to 1213: And again,
22 just to focus your attention, this is represented to

1 us to have been done on Tuesday the 27th of July,
2 which was a Tuesday. And Deborah Gorham writes to
3 you "on Wednesday, I told Bernie that VWF had placed
4 shredded remnants of personal documents in the bag.
5 On Thursday I told Bernie in front of everybody that
6 shredded remnants were in the bag."

7 Tell us about this.

8 A Yeah, I have no independent recollection of
9 any of this. The only, the only thing that makes me
10 believe that I was aware was the following E-mail
11 transmission.

12 Q So let's put that in and then you can
13 interpret them both together. "I recall the shredded
14 talk, because when we spoke to --" there's a
15 reference to Mr. Neuwirth, I take it?

16 A Yes, sir.

17 Q "And he briefed us on comportment and
18 interrogation, you mentioned that -- that was on
19 Wednesday evening, right? So it took until Monday to
20 figure out it should be looked at?"

21 And it goes on a little bit. And again,
22 just to get that timing right, I take it that on the

1 night before the Park Police interviewed you, you in
2 fact were briefed by Mr. Neuwirth and others on what
3 was going to come up in the interview; right?

4 A Yes, and I believe that it was on Wednesday
5 evening that Deborah addressed -- the time anyway
6 that I was aware that she addressed the torn paper, I
7 think, was the -- I don't think shredding is an
8 accurate word.

9 Q Okay. So now taking the two together, 1213
10 and 1214, can you tell us what this portion of the
11 conversation is about? You can take a minute just to
12 kind of read them both in conjunction.

13 A Right.

14 (Witness reviewed the document.)

15 Again, in Deborah Gorham's transmission to
16 me, I believe that she was referring to torn paper
17 being placed by Mr. Foster in the burn bag, not the
18 briefcase, and I don't know to which burn bag she was
19 referring. I think my memory, though, is that it
20 would have been in the burn bag -- she certainly has
21 never said that she saw him place torn paper in his
22 briefcase, at least not to me and not in my

1 presence.

2 In the next E-mail, which certainly
3 refreshed my memory on the torn paper discussion,
4 indicates that that took place on the evening that we
5 were briefed, it's my recollection, essentially by
6 Bernie in the presence of Cliff and Steve Neuwirth on
7 Park Police and I think FBI interrogation.

8 Q Now, is it your understanding or your
9 recollection that on that Wednesday Ms. Gorham said
10 to Mr. Nussbaum in the presence of Mr. Neuwirth that
11 she understood that Mr. Foster had put torn-up paper
12 in the burn bag?

13 A I believe that was on Wednesday. That's
14 the only conversation that I believe I was present
15 and witness to. I see nothing here to make me
16 believe I was one of the people in front of whom she
17 spoke about this on Thursday.

18 Q Tell us what you remember of this
19 conversation on Wednesday?

20 A I have no independent recollection. I'm
21 going strictly by the fact that she spoke here
22 about -- and I say I recall it, all I recall is her

1 speaking about torn paper. I have no recollection as
2 to what it was, what color it was --

3 Q So you -- I'm sorry, go ahead.

4 A -- or the significance. She had spoken
5 about his writing letters, for instance, and mailing
6 them.

7 Q So you have a recollection that on
8 Wednesday evening she had some kind of conversation
9 in front of you with others in the office about torn
10 paper?

11 A Yes, I believe so.

12 Q And that's something different than your
13 recollection about her conversation with you where
14 she said that she saw yellow stickies in the bottom
15 of Mr. Foster's briefcase?

16 A This is many days later. This
17 conversation -- well, I guess it wasn't many. It was
18 the night before I was briefed. What night was I
19 briefed by the Park Police?

20 Q It was a Thursday.

21 A And he killed himself on a --

22 Q On a Tuesday.

1 A Okay. I knew about little shredded --
2 little yellow sticky notes, excuse me, very soon
3 after we knew about his death. I don't know whether
4 it was that morning that we came in and Deborah and
5 Bernie went into one of the offices. I'm not certain
6 of that, but it wasn't until significantly later,
7 obviously, that I knew that there was something found
8 ultimately in a briefcase. At no time did I think
9 this was the same batch of yellow sticky notes.

10 Q So in your mind, this discussion about
11 torn-up paper on the Wednesday evening before the
12 Park Police interviews refers to something different
13 than the conversation you had with Ms. Gorham about
14 yellow things in the bottom of the briefcase?

15 A Right. One was referred to as little
16 yellow sticky notes in the bottom of the briefcase,
17 as though they were just a little pile of little
18 yellow sticky notes that came apart, and the other
19 was seemingly someone had torn up something and
20 thrown it in the burn bag.

21 Q And other than -- now, I want to be
22 comfortable with this and make sure you're

1 comfortable with this. From the E-mails, do you
2 have -- putting aside the E-mails and what they say,
3 what you are interpreting, do you have a recollection
4 of that Wednesday evening before the Park Police
5 interviews of Deborah Gorham talking about torn-up
6 paper?

7 A No. I have an independent recollection of
8 the little yellow sticky notes at another time.

9 Q But the torn-up paper is your -- is based
10 on your reading of the E-mails?

11 A It refreshes my memory, but not enough to
12 make me confident to say I have 100 percent
13 independent recollection of this conversation.

14 Q So you have a refreshed memory, but you're
15 not clear enough to be 100 percent confident about
16 your ability to recount it?

17 A I think I would feel comfortable saying
18 that, yes.

19 Q And your understanding of the reference to
20 the bag here where there's a reference to VWF placing
21 remnants of personal documents in "the bag," is that
22 "the bag" refers to the burn bag and not the

1 briefcase?

2 A Absolutely.

3 Q Did you at some point after the 26th have a
4 conversation with anybody else in the White House
5 counsel's office about the circumstances under which
6 this writing was found?

7 MR. BEN-VENISTE: You mean the torn-up --

8 MR. CHERTOFF: The torn-up writing, yeah.

9 THE WITNESS: The torn-up pieces of paper
10 that turned out to be writing.

11 BY MR. CHERTOFF:

12 Q In the briefcase, right.

13 A Oh, heavens, I'm sure we all discussed it.

14 Q Did you talk about it with any of the
15 lawyers in the White House counsel's office after the
16 26th?

17 A I'm sure I discussed it with Bernie.

18 Q Do you remember what Bernie said to you?

19 A That it was a torn-up note found in the
20 bottom of the briefcase, essentially by accident.

21 Q Did he discuss anything about the
22 circumstances of the discovery?

1 A I don't recall our verbatim conversation.
2 I know that it was a very, very upsetting time.
3 There was not a great deal of explanation offered.
4 My sense was that it was happenstance that it
5 happened to be found, that it was not being searched
6 for at the time that it was found.

7 Q And you got this from whom?

8 A I asked Bernie specifically, you know, and
9 I think at that point I think I said this must have
10 been the little yellow sticky notes.

11 Q And what did he say?

12 A I don't remember him saying anything.

13 Q Did he say what you were referring to?

14 A I don't remember.

15 Q And did you have in this discussion with
16 Mr. Nussbaum and in the other -- did you have any
17 mention -- did you mention to him the burn bag or ask
18 him about the burn bag?

19 A No, I don't believe so.

20 Q Did Ms. Gorham tell you either the evening
21 before this E-mail or the morning before you did
22 E-mail traffic that Mr. Nussbaum had actually called

1 her in to interrogate her?

2 A I don't recall it being put that way.

3 Q Do you remember how she put it?

4 A Deborah had several conversations with
5 Bernie, and none of us had any explanation as to why
6 Vince was dead. So any time anyone had a
7 conversation, we would ask, you know, do we know
8 anything. I don't recall her ever saying she was
9 interrogated.

10 Q Did she indicate she was questioned about
11 the briefcase?

12 A I just don't remember exactly.

13 Q I just want to focus your attention on one
14 aspect of your examination, maybe we can just pin it
15 down as to time. You indicated that on the occasion
16 Deborah told you about the yellow sticky notes in the
17 briefcase, she did so after she came out of a meeting
18 with Mr. Nussbaum behind closed doors; correct?

19 A I believe he asked her to join him in
20 either one of the offices, yes.

21 Q Do you remember whether this occurred
22 before or after the Park Police interviews?

1 A I don't remember. That's been asked
2 before.

3 Q Do you know how long they were behind
4 closed doors?

5 A I'd have to speculate at this point.

6 Q Can you guess whether you think it was a
7 short time or a long time?

8 A I think it was relatively brief. I don't
9 think it was a lengthy period.

10 Q And you say she came out and she was
11 confused?

12 A We were all upset and confused. I recall
13 at one point Deborah coming out and shaking her head
14 and looking confused, dazed.

15 Q And then when she came out of this meeting
16 with Mr. Nussbaum, as best as you can recall -- I'm
17 trying to -- I just want to plumb your memory -- what
18 did she say to you about that meeting, and what was
19 the conversation about the sticky notes?

20 A Well, I don't believe Deborah offered
21 anything. I think I asked Deborah whether they had
22 found anything, had they determined anything. I

1 don't know how better to put this except to continue
2 to say that I was asking her did we know anything --
3 Vince Foster was dead, did we know why. She said no,
4 they had found nothing. And I went on to ask did you
5 look everywhere. And I suppose reiteration of what
6 I've said before. And when I asked specifically
7 about the briefcase, she said there's nothing in
8 there but a bunch of little yellow sticky notes. I
9 don't know if she said it's empty and there's nothing
10 else in there, but my understanding of what she said
11 to me was that my understanding was that it was
12 totally empty except for several little yellow sticky
13 notes.

14 Q Was it your impression that -- let me
15 withdraw the question.

16 Was it your impression that this
17 conversation occurred after there had been a search
18 of Mr. Foster's office in which she had been somehow
19 involved or present?

20 A I don't know. I don't remember
21 independently even when the Park Police came and did
22 their sort of witnessing of Bernie going through the

1 files. I don't remember specifically when the Park
2 Police interrogated us. I have a better recollection
3 having read the electronic mail, but an independent
4 recollection, I don't.

5 Q You had indicated at the beginning of the
6 deposition that you were not clear as to whether
7 these E-mails are complete. Is there anything you
8 recall in the E-mail traffic around this time that
9 you don't see?

10 A I was surprised that this was all we had.
11 I use my electronic mail extensively.

12 MR. BEN-VENISTE: Off the record.

13 (Discussion off the record.)

14 BY MR. CHERTOFF:

15 Q Are you saying you use the E --

16 MR. BEN-VENISTE: Let's put on the record
17 then so there will be no mystery of it that the
18 request, Ms. Tripp, that we made was narrow in terms
19 of the time frame involved, so that --

20 THE WITNESS: What time frame was that?

21 MR. BEN-VENISTE: It basically goes,
22 probably, my recollection is that it went to the

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1 26th.

2 THE WITNESS: From?

3 MR. CHERTOFF: The 20th.

4 MR. BEN-VENISTE: The 20th to the 26th and
5 that the White House apparently found this on the
6 27th and thought that it would be helpful to supply
7 it, even though it was outside the scope of what we
8 had asked for.

9 BY MR. CHERTOFF:

10 Q Do you think, Ms. Gorham, that there were
11 E-mails --

12 MR. BEN-VENISTE: This is Ms. Tripp.

13 BY MR. CHERTOFF:

14 Q I'm sorry, Ms. Tripp. Do you think there
15 were E-mails between you and Ms. Gorham or you and
16 others discussing the issue of Mr. Foster's office
17 during the period between the 20th and the 26th?

18 A Could you repeat that?

19 Q Is it -- do you have a sense that in the
20 period from the 20th to the 26th you had similar
21 E-mail conversations about the handling of, you know,
22 things with respect to Mr. Foster's office?

1 MR. BEHRE: Simply relating to the handling
2 of the documents?

3 MR. CHERTOFF: Yes.

4 THE WITNESS: I have no independent
5 recollection of these and less so of others I haven't
6 seen.

7 BY MR. CHERTOFF:

8 Q Do you think there is more to this sequence
9 of conversations on the 27th?

10 A It's difficult to say. I'm not totally
11 convinced we have it all.

12 Q Is there anything in particular you can
13 remember?

14 A I believe part of the text on the number
15 1212 may be missing. I think there is a possibility
16 that there was more text prior to "the Three
17 Stooges." And I think I don't want to say any more
18 on any of it. I'm unclear as to whether the rest of
19 them are or are not complete.

20 MR. CHERTOFF: Okay. I have no further
21 questions.

22 EXAMINATION

1 BY MR. BEN-VENISTE:

2 Q Well, let me follow up on your last answer,
3 if I may, Ms. Tripp. Do you recall that in this
4 correspondence with Ms. Gorham that is reflected in
5 Exhibit Z1212, there is something specifically
6 omitted that you remember having included in your
7 message to her?

8 A No.

9 Q Could you enlighten us on why you think
10 that it may have been incomplete, other than the fact
11 that the sentence is not a complete sentence, in that
12 it starts with a lower case letter?

13 A The fact that it starts with a lower case
14 letter is not of much concern to me. The electronic
15 conversation that was taking place was just that, a
16 back and forth conversation. I may be wrong and I
17 may not be, but I believe that there was more to this
18 first sentence.

19 Q Do you recall what that would have been?

20 A I don't. I believe it was a
21 characterization as to whom I was referring.

22 Q As to who would have been the Three

1 Stooges?

2 A Yes, sir.

3 Q I take it it is not Moe, Curly and --

4 MR. BEHRE: Larry.

5 BY MR. BEN-VENISTE:

6 Q -- Larry?

7 A Yes, sir.

8 Q But other than that, anything of substance
9 that you think is not included?

10 A I'm not comfortable with the electronic
11 mail transmissions the way they've been presented to
12 me.

13 Q In terms of the format?

14 A Well, the format and the fact that they,
15 just because of the format, look so foreign to me,
16 that I, under oath, don't feel I can say with all
17 certainty that these are verbatim transmissions.

18 Q It's been represented to us that these have
19 been extracted from some hard drive inside some
20 computer within the bowels, I presume, of the White
21 House by some company that has some expertise in this
22 type of excavation of electronic material. Now, that

44

1 may or may not answer your question about the format,
2 how this material comes out when it is extracted from
3 a hard drive in the way that they have apparently
4 used. I am probably one of the last people on earth
5 anyone would consult on matters of electronic
6 communications.

7 A Does it provide us with any guarantee that
8 what they have extracted is, in fact, all that there
9 is to extract?

10 Q Well, they've indicated that this is what
11 they have been presented with, and my understanding
12 is that there was some agency or company that was
13 asked to do this task and that this is what they
14 received. I'm afraid we can't be any more helpful
15 than that.

16 But let me go to the substance of all of
17 this if I may. And forgive me if I'm repetitive of
18 things that you testified about before, but it is our
19 intention to put this in the fairest context with the
20 best recollection that you can bring to bear on these
21 issues.

22 So let me start with the 21st, the day

1 after Mr. Foster's death.

2 A All right.

3 Q What was the general mood in the office?

4 You prefaced your remarks today by stating that we

5 would have to understand how people were feeling.

6 Could you elaborate on that?

7 A I can't overstate how traumatic this was

8 for anyone who had any dealing at all with Vince

9 Foster. I met Vince Foster shortly after the

10 inauguration and got to know him through very brief

11 conversations when I was working in the immediate

12 office and he would have reason to be down there. So

13 the sum total of my exposure to Vince Foster was

14 three months, perhaps four, I'm not certain. The

15 trauma level was much more intense than that. There

16 was not a dry eye in the place. There was a sense of

17 this is impossible to believe. I don't think that

18 can be overstated.

19 Q So in addition to the outward signs of

20 grieving and distress, I take it there was a level of

21 disorientation or suspension of belief, emotional --

22 of an emotional content simply beyond the crying?

46

1 A I don't know what a clinical definition of

2 being in shock is, but I believe that many of us

3 were, in fact, in that state.

4 Q And did you think as of the 21st that you

5 were -- would have been in the best position to have

6 provided coherent information to others, given what

7 you've just said?

8 A I don't know.

9 Q Now, in the briefing that Mr. Nussbaum gave

10 you prior to being interviewed by the Park Police or

11 in anticipation of the Park Police coming the next

12 day to interview you, do you recall what was said?

13 A I have a clear recollection of Bernie

14 making sure we all understood that we were to be

15 truthful, straightforward, to answer all questions

16 asked, and to not embellish or speculate.

17 Q Basically what your attorney probably told

18 you here?

19 A Yes, very similar instruction.

20 (Discussion off the record.)

21 (Recess.)

22 BY MR. BEN-VENISTE:

1 Q Okay, let's go to the 22nd, which is the
2 day that the various individuals were in attendance
3 in Mr. Foster's office while Mr. Nussbaum went
4 through the files. Do you recall being present while
5 a dozen or so additional people came into
6 Mr. Foster's office?

7 A I recall that happening. I was in my area.

8 Q Okay. You were in the reception, and you
9 were just outside --

10 A Yes, sir.

11 Q -- Mr. Foster's area. All right. Now,
12 following that do you recall -- strike that.

13 Having the sequence in mind, do you recall
14 whether you were interviewed by anyone from the Park
15 Police before that procedure took place where they
16 were all in Mr. Foster's office?

17 A I don't remember.

18 Q You were pretty much in shock the second
19 day as well, I take it?

20 A Yes, sir.

21 Q Now, you remember that at some point
22 Ms. Gorham mentioned to you that she had seen some

1 yellow stickies in the bottom of Mr. Foster's
2 briefcase?

3 A I don't remember her saying she had seen
4 these yellow stickies. She had said to me it's
5 empty. There is nothing there but a bunch of little
6 yellow stickies.

7 Q But what I'd like to understand clearly is
8 whether that comment by Mrs. Gorham was in response
9 to your inquiry, well, did you look everywhere for
10 this note, did you look in Mr. Foster's briefcase?

11 A I believe I said those sorts of things.
12 I'm not certain.

13 Q In substance?

14 A Yes, sir.

15 Q In substance you said, because you were not
16 in on the search, but you were interested in whether
17 a note or other indication explaining Mr. Foster's
18 motive could be found. And in that context you asked
19 Ms. Gorham whether they had looked in the briefcase?

20 A Yes, sir, I did.

21 Q Okay. And her response was in substance
22 it's empty, there's just some yellow stickies in the

1 bottom of the briefcase?

2 A Yes, sir.

3 Q Okay. Now, let me turn to the issue of the
4 burn bag. I take it as of the time of Mr. Foster's
5 death you did not recall whether or not Mr. Foster
6 had a burn bag in his office per se?

7 A Right.

8 Q You had a burn bag?

9 A Yes, I did.

10 Q And Ms. Gorham had a burn bag?

11 A I believe she did. I'm less certain of
12 that.

13 Q Did anyone else in the outside suite have a
14 burn bag other than you and possibly Ms. Gorham?

15 A Again, it's the timing issue. There came a
16 time in the counsel's office where there was a third
17 burn bag, I'm not certain it was during that time or
18 months thereafter.

19 Q When you say a third, you mean a third in
20 the reception --

21 A Yes, sir.

22 Q -- or a third altogether?

50

1 A Another one, a third in the reception
2 area. So in other words, I know I had one. I
3 believe that there was another that was used by Deb
4 and possibly Betsy. And I believe mine was mine, I
5 used mine extensively and I believe Tom Castleton
6 shared that one.

7 Q So as of the 20th of July, as far as you
8 know, there were two burn bags?

9 A I believe there were --

10 Q In the --

11 A At least two burn bags in the reception
12 area.

13 Q Well, when you say "at least two," who else
14 might have had one as far as you can recall?

15 A Again, there came a time when there was a
16 third one that was sort of in the reception area.
17 Whether it was by Betsy's desk or where it was
18 specifically I don't recall. But we did ask for
19 another burn bag and received another one at one
20 point.

21 Q Do you remember what might have occasioned
22 you making that request?

1 A They filled up quickly. And they were --
2 they were emptied on a regular schedule, but to
3 preclude anyone from using the trash where perhaps
4 the burn bag might be a better decision it was better
5 to simply have another burn bag.

6 Q You don't recall any specific event that
7 triggered the request that we could sort of tie into
8 to fix the point where that request was made?

9 A No, and I do believe it was -- if I were to
10 speculate -- would you like me to speculate?

11 MR. BEHRE: I wouldn't.

12 BY MR. BEN-VENISTE:

13 Q Well, Mr. Chertoff is a fan of
14 speculating.

15 A I think it was much later.

16 Q So it would be your best guess that the
17 third burn bag arrived later than -- much later than
18 Mr. Foster's death?

19 A Probably months later, yes, sir.

20 Q Now, you didn't know whether or not
21 Mr. Foster had his own burn bag, but did you know
22 whether or not Mr. Nussbaum had his own burn bag as

1 of the 20th of July?

2 A It was my understanding that Vince did not
3 and I thought Bernie did, but I never particularly
4 looked at it.

5 Q Okay. Now, let's go to this question of
6 Mr. Sloan's request for the typewriter.

7 A Yes.

8 Q I'd like you to think about whether his
9 request was made -- let's assume it was made at a
10 time that this torn-up note had been discovered and
11 that someone wanted to transcribe the contents, that
12 is write down everything or type out what was down
13 there in the utmost discretion. And putting aside
14 whether or not in terms of your personal feelings you
15 would have been entrusted at that point with the most
16 discrete kinds of information, would Mr. Sloan's
17 request have been consistent with someone wanting to
18 type this out in the most confidential sort of way?

19 A I believe so, yes.

20 Q That would provide an explanation for all
21 of this requesting of the typewriter and not using
22 the computer and so forth?

1 A Yes, I believe it would.

2 Q Now, as regards the speculating that was
3 going on in the E-mail as one who is not accustomed
4 to chatting on E-mails, would it be unfair to
5 characterize this as sort of an alternative to water
6 cooler chitchat or gossip?

7 A I would hesitate to call it gossip, and
8 even more so hesitate to call it water cooler
9 gossip. It sounds -- it has a connotation that
10 doesn't please me.

11 This was not what we would have considered
12 to be gossip of any kind. It was two colleagues who
13 worked very, very closely with a very dear and decent
14 man trying to come up with our own explanations as to
15 what was left behind to give us a sense of why we had
16 lost this dear man.

17 Q So in a sense, you felt that for whatever
18 reason, why appropriately or not appropriately, you
19 were not being let in on everything that was going
20 on, number one?

21 A Repeat that.

22 Q You were not being let in on, advised of

1 every development that had occurred?

2 A Absolutely not.

3 Q Okay. And yet you had a very keen interest
4 in learning as much information as possible about the
5 circumstances surrounding the death of your colleague
6 and friend?

7 A I think that's a fair statement.

8 Q Okay. So that when at the point that you
9 learned something big had happened, you learned that
10 something had been discovered because Mr. Neuwirth
11 stuck his head out of the door and said as much to
12 you. I found something; correct?

13 A He answered yes to my question did you find
14 something, or you found something, right.

15 Q So you knew from the amount of commotion
16 that this had caused that it was undoubtedly
17 something significance?

18 A Oh, yes, I thought it was significant.

19 Q But no one had told you what it was at that
20 point?

21 A Again, I'm not certain when I was told.

22 Q And where it had been found?

1 A Right.

2 Q So if I understand your testimony regarding
3 these, this E-mail communication, you were
4 speculating about the possibility that what had been
5 found might have been found in the burn bag?

6 A That's a fair statement.

7 Q And when Mr. Nussbaum explained to you
8 shortly after in response to your direct question of
9 him that a torn-up note had been found in Mr.
10 Foster's briefcase, did that strike you at the time
11 as being inconsistent with anything that you knew up
12 to that point?

13 A Quite the contrary.

14 Q That seemed to explain everything, all the
15 pieces of information that you were getting from
16 different sources?

17 A Exactly.

18 Q Okay.

19 MR. BEN-VENISTE: I have nothing further.
20 Thank you.

21 EXAMINATION

22 BY MR. CHERTOFF:

1 Q I just have a couple things. I notice on
2 the E-mails at the top where it says subject you have
3 the initials TS. Do you remember what that means?

4 MR. BEN-VENISTE: Which one are you looking
5 at?

6 BY MR. CHERTOFF:

7 Q I'm looking at 1206, 1207, 1208 says TS,
8 1209 says TS too, 1210 says TS. Do you know what
9 that refers to?

10 MR. BEHRE: If you could just go one by
11 one, it doesn't seem like they all say the same thing
12 and the authors aren't the same either.

13 BY MR. CHERTOFF:

14 Q Do the initials TS in the subject line mean
15 anything to you?

16 A If you'll note the first transmission was
17 the 1206 transmission created by Deborah Gorham. She
18 identified the subject line to which I then responded
19 as consistently the same or similar subject. That is
20 generally a tickler, and I can only speculate as to
21 what I thought she meant by that.

22 Q What did you think?

1 A I think that it indicated a level of
2 confidentiality to be observed. It had no --

3 Q As between the two of you?

4 A Yes, sir.

5 Q Do you know why she would have wanted to
6 indicate a level of confidentiality as between the
7 two of you given that this was taking place on a
8 system that was in the White House so it was not like
9 on the Internet?

10 A It was not on the Internet.

11 Q No, I know.

12 A Right. We were all aware, I was aware that
13 anything put into the electronic mail was subject to
14 retrieval. That was never a question. It was that
15 way late in the prior administration and it's
16 certainly that way at this point. It was, however,
17 treated as a private conversation. It was never
18 expected to show up on the Elmo on national
19 television. It was our way of communicating with
20 some comfort zone in terms of confidentiality.

21 Q Now, I want to ask you when you were
22 interviewed by the Park Police on the Thursday of the

1 preceding week, do you recall what the focus of their
2 questions was?

3 A Was it Thursday the following week, is that
4 a given?

5 Q Let's say the following week, I won't pin
6 you down to a date. When you were interviewed by the
7 Park Police the week before these E-mails, what was
8 the focus of their questioning?

9 A As I recall, my interview with the Park
10 Police was relatively brief. I was accompanied by
11 one of the associates, and I believe the questions
12 focused primarily on my relationship with Vincent
13 Foster, what my exposure had been to him, what I had
14 observed.

15 Q Now, at the end of his examination,
16 Mr. Ben-Veniste asked you whether the briefcase --
17 being told by Mr. Nussbaum that the paper, the
18 torn-up paper was found in the briefcase
19 satisfactorily accounted for all of your questions.
20 Did you ever get an answer to the question of whether
21 someone had looked in a burn bag in Mr. Foster's
22 office and found anything there?

1 A Well, I never asked that question, so I
2 don't know.

3 Q Did you ever pursue the question of what
4 Ms. Gorham had said the previous week concerning
5 Mr. Foster having torn up some papers and putting
6 them in a burn bag?

7 MR. BEN-VENISTE: I don't think that's the
8 substance of what even Ms. Gorham testified to about
9 what Ms. Tripp --

10 MR. CHERTOFF: I'll go back.

11 BY MR. CHERTOFF:

12 Q You had -- from the E-mail you had a notion
13 that there was, or a recollection that there was a
14 discussion the previous week?

15 MR. BEN-VENISTE: It was speculation first
16 of all.

17 MR. CHERTOFF: Well, let me get my
18 questions out and then we can have all the
19 speechifying that you want.

20 BY MR. CHERTOFF:

21 Q My question is, directing your attention to
22 1213, I believe your testimony was that you, from the

60

1 E-mail, determined that the previous week Ms. Gorham
2 had had some discussion about Mr. Foster putting some
3 torn-up paper in the burn bag. That's 1213 and
4 1214. Am I correct?

5 A We are, of course, talking about two
6 totally different things. You are talking about what
7 is referred to in the E-mail as shredded remnants,
8 not the sticky notes, am I right?

9 Q Yes, we're not talking about sticky notes
10 now, I understand that's a separate thing. This is
11 now the discussion on the previous Wednesday about
12 shredded remnants.

13 A All right. What is your question about
14 then? I'm sorry.

15 Q My question is, first of all, you know,
16 based on the E-mail, can you determine that there was
17 a conversation Ms. Gorham had the previous Wednesday
18 in your presence with at least Mr. Nussbaum
19 concerning Mr. Foster putting some torn-up paper in a
20 burn bag?

21 A I believe based on E-mail 214 that at the
22 time I recalled Deborah mentioning that during her

1 prebrief prior to the arrival of the Park Police.

2 Q Did you ever get any further information
3 later as to whether that had been followed up by
4 anybody?

5 A No, not specifically.

6 MR. CHERTOFF: Thank you.

7 EXAMINATION

8 BY MR. BEN-VENISTE:

9 Q Let me ask you one more question along
10 these lines. And that is whether it would refresh
11 your recollection regarding Ms. Gorham's reference if
12 I were to suggest to you that she was referring to a
13 practice of Mr. Foster's and/or herself during that
14 Wednesday prebrief discussion, that is that she was
15 talking about whether Mr. Foster or she had a habit
16 of utilizing the burn bag and first tearing up paper
17 before putting it in?

18 A I'm not comfortable with that being the
19 explanation for these two E-mails. I think we were
20 talking about specific ripping up. I don't think
21 this was a generic statement that said we rip papers
22 up before we dispose of them.

1 Q Well, the first time you were asked about
2 this you indicated that you didn't have a specific
3 recollection?

4 A Right.

5 Q And what you were trying to do is to
6 reconstruct --

7 A Exactly.

8 Q -- what Ms. Gorham may have been referring
9 to --

10 A Right.

11 Q -- by looking at the E-mails? Is that
12 still the case?

13 A It has refreshed my memory somewhat, not
14 100 percent, but somewhat.

15 Q And what is the current state of your
16 memory? That's really, I guess, what we're looking
17 for.

18 A Well, again based on having been presented
19 these E-mails and going over them, I believe I
20 understood at the time that she was informing Bernie
21 on more than one occasion that Vince had on a recent
22 occasion placed torn pieces of paper in a burn bag.

1 Q So that rather than talking about practice
2 she was talking about some anecdotal information?

3 A This is, however, only my interpretation of
4 what she wrote.

5 Q Right.

6 A Based on a perspective of now two years.

7 Q Right. So it is your interpretation rather
8 than your recollection, I know it's difficult to try
9 and separate those out, but to the best of your
10 ability, what we want to do is to get you to provide
11 us what is recollection and try to separate that from
12 what is reconstitution or speculation.

13 A Were I to put these electronic
14 transmissions aside I would have virtually no
15 recollection of that conversation.

16 Q Okay. So now you have the benefit of
17 having the E-mails in front of you, and having that
18 benefit my question is whether this material
19 refreshes your recollection that Ms. Gorham mentioned
20 in your presence that she had some anecdotal
21 information about Mr. Foster having torn up some
22 material at some point prior to his death, and place

1 that material in a burn bag, be it hers or his or
2 someone else's?

3 A I'm unclear how to answer this except to
4 say that my interpretation now from these
5 transmissions was that Deborah was trying to impart
6 information to Bernie of a specific instance.

7 Q Do you recall what that -- you say you have
8 no recollection, but you're trying to puzzle through
9 what this E-mail means. Do you have any guidance as
10 to what that specific instance was of Mr. Foster
11 tearing up paper and putting it in a burn bag and if
12 so, what would -- what was the date of it and whose
13 burn bag was it?

14 A Well, that was more than one question. Let
15 me try to be clear. I have no independent
16 recollection of this conversation except that during
17 this period I was aware that Deborah had said that
18 Vince had torn-up personal pieces of paper and put
19 them in a burn bag. Receipts, during a cleaning out
20 process, at which time he also placed three envelopes
21 of personal mail in the out box with stamps. That
22 portion of torn up paper in a burn bag was at the

1 same time that this other portion was brought up. I
2 don't know when that was.

3 Q Okay. But that could be very helpful that
4 Ms. Gorham mentioned in the context of this tearing
5 up of paper that this was on the same occasion that
6 he had placed some personal mail in his out box.

7 A That's not indicated here. I have a
8 recollection of Deborah telling me that he had done
9 so.

10 Q Okay. That he had also been cleaning out
11 personal effects?

12 A So to speak, yes, sir.

13 Q And tore them up and placed them in a burn
14 bag?

15 A That she had seen him place torn paper in a
16 burn bag.

17 Q Okay. Now, was that associated with the
18 day of his death or at some earlier point?

19 A I believe it was either the morning of his
20 death or the day prior to his death. Sorry.

21 Q And that is to the best of your ability
22 everything that you can recall about what Ms. Gorham

66

1 said about this subject?

2 A Are you asking me if I have more
3 information as to what Deborah said during this
4 period?

5 Q About this very subject matter.

6 A Torn paper or mail?

7 Q Yes, torn paper. But you've associated it
8 with her telling about the mail and she also spoke
9 about the torn paper; correct?

10 A Yes. I'm telling you that I am not certain
11 they took place simultaneously, the two
12 conversations. Those are the two things I recall
13 specifically. Independent of the electronic mail.
14 Electronic mail serves to refresh my memory in terms
15 of the fact that she had in fact addressed his
16 disposal of paper and of mail.

17 Q And the paper that she discussed in this
18 context was personal receipts I think you mentioned?

19 A I believe she said he had been cleaning out
20 his personal papers, receipts, bills, that sort of
21 thing, and then the envelopes were mentioned as well.

22 Q And those were the ones that were placed in

1 the mail?

2 A Yes.

3 Q In his out box?

4 A Yes.

5 MR. BEN-VENISTE: Okay. Well, that's very
6 helpful. Thank you. I can see that it was an
7 arduous process for you to go through that. But I
8 think helpful to us to give it some context and
9 helpful to us in that regard. I have nothing
10 further.

11 MR. CHERTOFF: I have nothing further,
12 either.

13 (Whereupon, at 5:02 p.m., the deposition
14 was concluded.)

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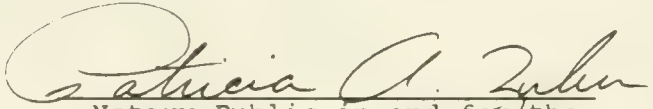
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LINDA R. TRIPP

CERTIFICATE OF NOTARY PUBLIC & REPORTER

68

I, PATRICIA A. ZUBER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
District of Columbia

My Commission Expires FEBRUARY 14, 2000

**DEPOSITION OF CHARLES SCALERA
IN RE: S. RES. 120**

TUESDAY, FEBRUARY 13, 1996

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of CHARLES SCALERA, called for examination pursuant to notice of deposition, at 2:15 p.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

VIET D. DINH, Esq.
Majority Associate Special Counsel
GLENN F. IVEY, Esq.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CONTENTS

| WITNESS | EXAMINATION |
|--------------------------------------|-------------|
| Charles Scalera by Mr. Dinh | 5 |

1 PROCEEDINGS

2 MR. DINH: As you know, my name is Viet
3 Dinh. I'm with the Majority staff. Mr. Glenn Ivey
4 is from the Minority staff of the Special Committee
5 to investigate Whitewater Development Corporation.

6 This deposition is conducted pursuant to
7 Senate Resolution 120. The Resolution establishes a
8 special committee to be administered by the Banking
9 Committee to investigate and conduct public hearings
10 into Whitewater Development Corporation, Madison
11 Guaranty Savings & Loan Association and other related
12 matters. Section 1(b)(1) of Resolution 120
13 authorizes an investigation and public hearings into
14 "whether improper conduct occurred regarding the way
15 in which White House officials handled documents in
16 the office of White House Deputy Counsel Vincent
17 Foster following his death."

18 I anticipate this will be the focus of
19 today's deposition. This deposition will be taken
20 under oath. The stenographer will prepare a record
21 of questions and answers. The deposition is being
22 conducted in advance of public hearings and we have

1 not decided who to call as witnesses at such
2 hearings, but we will notify you in advance if indeed
3 you are called as a witness.

4 The transcript of today's deposition will
5 be treated as committee confidential until the
6 commencement of public hearings and you are called to
7 testify. At that time, the transcript may be made
8 public in whole or in part. Prior to the hearings,
9 if you are called to testify, you will receive a
10 letter advising you of that fact and you also will
11 receive a copy of the deposition transcript four days
12 in advance of your hearing.

13 That is provided to you for the purpose of
14 preparing your testimony at such public hearings and
15 it is not to be disclosed for any other purpose. You
16 may be represented by counsel. As I see, you do not
17 have counsel here with you.

18 Pursuant to the procedures set forth in
19 Resolution 120, objections as to the form of the
20 question will be noted for the record. There are two
21 grounds upon which you may refuse to answer a
22 question posed by me or Mr. Ivey, that is on the

1 basis of privilege or scope, scope being that the
2 answers and the question falls outside the scope of
3 the matters authorized by Resolution 120.
4 Ultimately, the Committee Chairman will rule on the
5 objections where you refuse to answer a question.

6 Please swear in the witness.

7 Whereupon,

8 CHARLES SCALERA

9 was called as a witness and, having first been duly
10 sworn, was examined and testified as follows:

11 EXAMINATION

12 BY MR. DINH:

13 Q State your name for the record, please.

14 A Charles Scalera.

15
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21 Q From the notice of your deposition here
22 today, have you had any conversations with anyone

1 other than your attorneys or immediate family members
2 about the substance or subject matter that you have
3 been asked to testify about?

4 A No.

5 Q Without telling me what you were asked or
6 what you said, can you tell me whether you have been
7 interviewed by any investigative agency or personnel
8 regarding the matters about which you are about to
9 testify?

10 A No.

11 Q What is your present occupation?

12 A Attorney.

13 Q Do you know who Patsy Thomasson is?

14 A Yes, I do.

15 Q When did you first meet Ms. Thomasson?

16 A I think it was December '92.

17 Q Have you known Ms. Thomasson continuously
18 until the present?

19 A Yes.

20 Q What was your relationship with
21 Ms. Thomasson in July of 1993?

22 A Just an acquaintance basically. I had

1 probably been in her company maybe twice.

2 Q Twice in July of 1993?

3 A From December when I first met her, I
4 believe, until July of '93.

5 Q Can you tell me under what circumstances
6 you met her in December of 1992?

7 A I met her through her cousin.

8 Q Her cousin introduced you two?

9 A Yes.

10 Q What was her cousin's name?

11 A Paula Thomasson.

12 Q And I take it that she is -- Ms. Paula
13 Thomasson was acquainted both with you and Ms. Patsy
14 Thomasson?

15 A That's correct. I met Paula when she was
16 working for Senator Bumpers and then when she went on
17 the campaign.

18 Q "The campaign" being the Clinton-Gore
19 campaign?

20 A Yes. I would say I met Paula, I don't
21 know, I would have to check my records, but sometime
22 in '91 or '92. I think '91. I think it was '91.

1 Q Let me direct your attention to the night
2 of July 20th, 1993. Just to put it in context, July
3 20, 1993 is the night that White House Deputy Counsel
4 Vincent Foster passed away.

5 Do you recall whether you were with
6 Ms. Thomasson that evening?

7 A Which Ms. Thomasson?

8 Q For the remainder of the deposition, I
9 shall refer to Ms. Thomasson as Ms. Patsy Thomasson
10 unless I specifically --

11 A The answer to the question is with
12 neither. But just so I know now, it is Patsy until
13 you change.

14 Q When was the last time prior to July 20,
15 1993 that you saw Ms. Patsy Thomasson, that you can
16 recall?

17 A Before?

18 Q Before July 20, 1993.

19 A I think it was probably December of '92.
20 I'm not sure. Maybe one other time between that
21 period of December of '92 until then maybe. I don't
22 know.

1 Q When was the first time after July 20, 1993
2 that you saw Ms. Patsy Thomasson?

3 A I can't remember when, but I probably saw
4 her sometime during 1994.

5 Q At the beginning or end of 1994?

6 A I can't remember. It would have been a
7 social occasion type of situation. It wouldn't just
8 be her and myself. It would be with a group of
9 people, maybe at a party or something like that.

10 Q So, your contacts with Ms. Thomasson until
11 1994 was fairly infrequent?

12 A Yes, definitely so.

13 Q Did your contact become more frequent since
14 1994?

15 A No.

16 Q So --

17 A I don't think -- in the whole span from
18 1992 through today I probably have been in contact
19 with Patsy four times, in person or telephonically.

20 Q That was my next question. Thank you very
21 much.

22 Did there come a time when Ms. Thomasson

1 stated to you about her version of the events of July
2 20, 1993?

3 A No.

4 Q Have you ever talked about Vincent Foster's
5 death with Patsy Thomasson?

6 A No.

7 Q Have you ever talked about the handling of
8 any documents in Mr. Foster's office at the time of
9 his death with Patsy Thomasson?

10 A No.

11 Q Have you talked to any other White House
12 officials regarding the death of Mr. Vincent Foster?

13 A No.

14 Q Have you talked about the handling of any
15 papers in Mr. Vince Foster's office on the night of
16 his death with any other White House employees?

17 A No.

18 Q Did Ms. Patsy Thomasson ever tell you that
19 she had removed any documents from Mr. Foster's
20 office on the night of his death?

21 A No.

22 Q Did Ms. Thomasson ever tell you that she

1 had to enter Mr. Foster's office on the night of his
2 death to look for documents for Mrs. Clinton?

3 A No.

4 Q Did Ms. Patsy Thomasson ever tell you that
5 she had to open a safe in Mr. Foster's office on the
6 night of his death in order to look for documents for
7 Mrs. Clinton?

8 A No.

9 Q Did she ever tell you whether she had any
10 conversations, contacts or meetings with anyone about
11 removing documents from Mr. Foster's office on the
12 night of his death?

13 A No.

14 Q Did she ever tell you whether she saw
15 anyone remove any documents from Mr. Foster's office
16 on the night of his death?

17 A No.

18 Q Have you ever discussed the handling of
19 papers in Mr. Foster's office with anyone other than
20 a White House official since July 1993?

21 A I don't think so. I mean, obviously since
22 I got the call, I have sort of ruminated around in my

1 mind. I talked to counsel.

2 Q Since you got the call, meaning the call
3 from our committee?

4 A Yes.

5 Q Your testimony is that you don't think --

6 A Because I was told at the time that I was
7 being deposed concerning events surrounding Vince
8 Foster's death and the events that took place
9 subsequent, right thereafter.

10 Q I believe Ms. Alice Fisher of our office
11 contacted you and advised you of that?

12 A Yes, she contacted me I think last year,
13 maybe in November or December. And I think it was
14 Mark.

15 Q Mark Brenner.

16 A She contacted me at home and asked if I
17 would be willing to testify and I said fine. Then I
18 didn't hear anything and just let it go. Then Mark
19 called me, I guess, about two weeks ago, a little
20 under that. I asked him, I said why would you be
21 wanting to have me deposed. That's what he said.
22 So, obviously --

1 Q You have had some time, in your words, to
2 ruminate about the subject matter and you don't think
3 you had any conversations with anyone regarding the
4 handling of documents in Mr. Foster's office on the
5 night of his death?

6 A No. I mean, I talked to counsel about it.
7 I have sort of speculated when you told me what you
8 were going to be questioning me about.

9 Q Other than your conversations with your
10 counsel since you have had the notice of
11 deposition --

12 A No.

13 Q -- do you have any other information to
14 give to the Special Committee regarding the handling
15 of documents in Mr. Foster's office on the night of
16 his death other than what you have gleaned from the
17 newspaper or other media reports?

18 A None whatsoever.

19 Q Do you have any other information other
20 than what you have gleaned from newspaper and media
21 reports that you can give to the Special Committee
22 regarding Mr. Vincent Foster's death?

1 A No, none whatsoever.

2 Q Any information other than what is reported
3 in the media or the newspaper regarding Whitewater
4 Development Corporation?

5 A None whatsoever.

6 Q Madison Guaranty Savings & Loan
7 Association?

8 A None whatsoever.

9 Q Capital Management Services?

10 A None whatsoever.

11 Q Seth Ward?

12 A No.

13 Q David Hale?

14 A No.

15 MR. DINH: Thank you very much for your
16 time. I have nothing further.

17 MR. IVEY: I certainly have no questions.

18 (Whereupon, at 2:30 p.m., the deposition
19 was concluded.)

20

21

22

CHARLES SCALERA

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

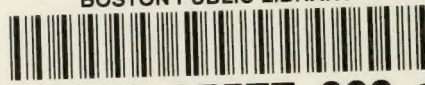
Brenda Smonskey
Notary Public in and for the
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